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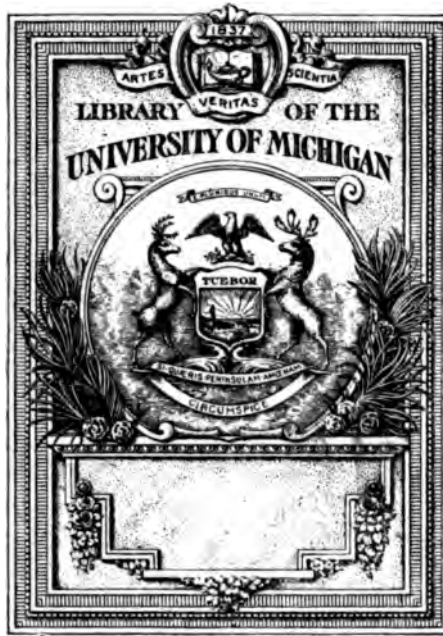
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COLLAPSE AND RECONSTRUCTION

COLLAPSE AND RECONSTRUCTION

EUROPEAN CONDITIONS AND
AMERICAN PRINCIPLES

BY

SIR THOMAS BARCLAY

AUTHOR OF

"PROBLEMS OF INTERNATIONAL PRACTICE AND DIPLOMACY"

"NEW METHODS OF ADJUSTING INTERNATIONAL
DISPUTES AND THE FUTURE," ETC.



BOSTON
LITTLE, BROWN, AND COMPANY
1919



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Norwood Press
Set up and electrotyped by J. S. Cushing Co., Norwood, Mass., U.S.A.

PREFACE

It would be pretentious to offer in a short and single volume more than suggestions on so vast a subject as the political reconstruction of a Europe which the continuance of the War beyond any practical purpose but destruction has shattered to its foundations.

It is futile now to express regrets that those in power turned a deaf ear to the warnings of others who had at any rate some knowledge of Central Europe, Russia and the Balkans, — to warnings as to the probable consequences of the break-up especially of the Austro-Hungarian Empire, or of indifference to the aspirations of the Russian proletariat, or to the meaning of social democracy and — as they are likely to do now — to the danger of relying on superannuated and imperfect sources of information and methods for dealing with many unprecedented problems.

If Western Governments had not had their eyes concentrated on Berlin, they might have understood, as all who know Central Europe politically understand, that if the overtures of February, 1915, from Vienna had been followed up, the War might have come to an end just as it did with the Austrian collapse in 1918, without bringing down on the heads of all the scaffolding of a state system laboriously built up by generation after generation of experienced craftsmen and resting on geo-

graphical and historical foundations which it is beyond the power of any congress of peace to alter.

Empires might have been preserved which, whatever their faults, were in process of transformation and were better working political entities than any cut-and-dried schemes of state formation now on the horizon are likely to become except by a process of evolution which will probably bring us back eventually to something very like what has been destroyed.

A historian and thinker like President Wilson, a careful observer like M. Jules Cambon, a political sceptic — in spite of his apparent optimism — like Mr. Lloyd George, may exercise a restraining influence on the impetuosity of those who think the problems of constructive politics can be solved by efforts of imagination or the paper schemes of ingenious draftsmen.

I have followed in the distribution of the subject-matter a system I have adopted in other books to the satisfaction of my readers, — that of confining the text of the chapter to controversial matter and shunting digression, historical and other, into special notes which are consequently sometimes longer than the text of the chapter itself.

The principles laid down by President Wilson have been accepted by both sides to the conflict as peace preliminaries. They are mutually binding and constitute for the time being the basis of reconstruction. Anybody writing at present on the subject has no option but to treat them as such.

T. B.

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COLLAPSE AND RECON- STRUCTION

INTRODUCTION

THE task which the World's War¹ has imposed upon statesmen is not only one of reconstruction, it is one of reconstruction on such a plan that it will eliminate as far as possible causes of war in the more immediate future. The pretentious formula of a "War to end War" is not based on knowledge we possess from experience either psychological, sociological or historical. If, however, the "War to end War" is pretentious, the duty of statesmen will none the less be to redeem the failure of their own generation and approach the future with a

¹ I call the war *World's War* because it is the English rendering of *Guerre Mondiale*, itself probably derived from the German term *Weltkrieg*; neither term is based on English or French analogies. If the term *Seven Years' War* had not already taken a place in history, it might have been applicable to the present war, the origin of which historians will probably date back to September, 1911, the date of the outbreak of the Turco-Italian War, since when the continuity of causation has been unbroken. It may come to be called the *Great War*, but if other wars arise almost immediately out of it, as is possible if any settlement is attempted which is not sincerely democratic or based on geographical and economic necessity, historians may revert to the time-honoured method of calling it after the years of its duration.

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sense of the responsibility they have incurred towards posterity.

The duration of peace, however, is dependent rather upon a simultaneous advance of the reasonableness of mankind than upon any artifices of statesmen and diplomatists.

I say *simultaneous* because just as the slowest ship makes the pace of a fleet, so the most backward nation in the community of nations makes the pace of civilisation.

But even assuming a relatively high degree of civilisation in any one State, the majority may be easily swayed by circumstances, oratory, prejudice, their mental balance disturbed by over-education, the rectitude of their vision vitiated by tradition and the different influences which determine the character of groups of mankind just as they do that of individuals.

Moreover, those who get possession of power and direct a national policy may be ignorant persons who have entered political life owing to connections with those already in possession or inexperienced persons who, having had to perform absorbing menial functions in politics for the sake of a living, have had no experience outside their own parliament or its purlieus and whose training has been one of obedience to the initiative of others. These necessarily form the majority in an administration recruited from any parliament.

The game of diplomacy, again, is often practically one of irritation and counter-irritation disguised in

courteous language. Foreign Offices are generally too absorbed by immediate and proximate details to observe clouds gathering on the horizon. None, I may say in this connection, worked harder than the British Foreign Office to avert the crisis when it burst upon them. It is neither just nor expedient to blame men in office when such a crisis arises. If subject for blame there is, let it apply to a system which has persisted in all European countries in spite of the criticism of able and experienced men who have lacked, however, the numbers and prestige to overturn a superannuated system of dealing with foreign affairs.

President Wilson's notes and messages drew European attention to the difference of the American method but did not at once win approval. Some European critics treated the American method as mere *cabotinage* and it is only gradually that Europeans have begun to understand that in America foreign policy is not regarded as involving quite a different set of democratic considerations from domestic policy, in reference to which, in all self-governing countries, a government must be and remains in constant touch with the people it affects.

Then again wars are gambles of nations. The States which embark on them believe they will be successful; otherwise we must assume they would not so act.

They are seldom unpopular. They appeal to the spoliative instincts of mankind because they are in the nature of gambling, and if statesmen and writers

criminal enough to encourage war are not always condemned as they ought to be, they are not distinguishable from abettors of gambling hells in a well-ordered community except in the scale of the enormity of the offence.

And war has the effect on men's minds of all great emotions. It seems to paralyse the power to reason. The contagion of belligerent emotion, moreover, is not confined to the belligerent States; it is almost as intense among neutral nations who watch the game, and carry on a "war of opinion", almost as active as if they were parties to the struggle.

The expectation that war will fall into desuetude with the growth of popular wisdom and of the consciousness that its consequences are not advantageous to the majority may therefore not be realised, and it is safer to assume that it will not, and take precautions accordingly.

It is true that it was a commonplace before the War to speak of a European conflict as sooner or later inevitable. The state of tension in Europe had become unendurable. Industrial life was being vitiated by the prevailing unrest: the margin of speculation had grown far out of its natural proportion. The air was charged with tense and aggressive currents of feeling, and when war broke out it came almost as a relief — like a thunder clap after a period of enervating, sultry, storm-threatening weather.

Yet postponement of what seems an inevitable event in the history of nations opens up a variety

of possibilities. Circumstances may change, other solutions may occur to statesmen, diplomatists, publicists, politicians; a reaction may set in, the tide of public opinion may turn, new affinities may grow up, a common cause may arise. And thus wars may be avoided by mere patience and steady, untiring effort on the part of those in charge of the destiny of nations.

It will be for the future historian when he has access to all the available material still hidden from the public eye to form a dispassionate opinion as to whether statesmen, and which of them, failed; where the system, if any, broke down; what were the causes of the poor quality currently attributed to contemporary statesmanship. All the sciences, even astronomy,¹ may have a voice in the solution of its greatest problem, which, after all, is why the War took place at all.

Meanwhile, those who have to deal not with history but with construction will have to build with the materials they possess, insufficient as they may be. If they sincerely wish to secure a period of peace for posterity they will, nevertheless, have to search for causes beyond the immediate occasion of the War, for the underlying tendencies which preceded it and distinguish between the inflammable material and the igniting flame and endeavour to counteract the revival of situations which have proved so disastrous to mankind.

A perusal of the diplomatic records issued by the

¹ See Professor Raphael Dubois' studies.

different Foreign Offices leaves the reader under the impression that the War had no justification whatsoever. We see in it England and Russia making the most strenuous efforts to preserve peace, France playing the part of a resigned associate of both, ready to take consequences of acts to which she was not a party, Belgium the victim of unprovoked aggression, Germany trying, down to a point, to preserve peace, then vaguely quarrelling with Russia, and Austria, on the eve of a settlement of the originating grievance, aghast at the course being taken by events she had started. In the whole tangle of diplomatic despatches and appeals, there is nothing which can be singled out as a matter justifying war except the violation of the neutralisation of Belgium, which came rather as a consequence than as a cause of the War. Hence the bewildered anxiety with which the Foreign Offices of the belligerents all tried to exonerate their respective governments from liability for a war which they alleged with equal emphasis all round they had been doing their utmost to avoid.

A number of unofficial writers have endeavoured to explain how and why the War came about and much ingenuity has been exercised to gather from the different official books evidence of the guilt of the different parties involved. It was the Russian mobilisation, says Germany, which brought on the calamity. It was Germany, say England and France, who, impatient not to let the chance of war escape, hurried into it while Austria-Hungary, Russia and Serbia were still negotiating a settlement

and had practically come to terms. It was England, again say later German authorities, who might have prevented the war by exercising influence at Petrograd. By not doing so, while at the same time protesting her devotion to peace, she played once more her old double-faced game and is really the guilty party, and so on.

These attempts to saddle blame on each other are interesting features for the historian in themselves. It is possible that diplomacy did fail. It is also possible that more than one Government involved did not bring the maximum of effort to bear on the preservation of peace. It is possible again that there were *arrière-pensées*, considerations of a compensating character, which brought consolation for failure in the effort to preserve peace.

The different objects which have been put forward by responsible persons, such as the annihilation of militarism in Germany, the destruction of British maritime supremacy and other ideas only show that writers are still groping for reasons. Among tendencies antecedent to the War, it may, however, be remembered that the German nation had drifted into a state of great irritability through constant appeals to its patriotism, appeals without which the necessary taxation for increasingly heavy expenditure on armaments would probably have appeared to the German people and their representatives unjustifiable. The Morocco incidents, especially the Agadir affair, excited Germans, as I know from personal experience, to such demon-

strative anger that in 1911 war was only prevented through the direct action of the Kaiser himself. The Germans felt that their enormous and well-trained army and their expensive and efficient fleet had not saved them from a humiliating diplomatic defeat at the hands of a country they believed themselves capable of crushing in a six weeks' campaign. The intervention of England in 1911 had been a warning, but the circumstances in 1914 were different. It was currently stated that England was no longer pledged to support France after she had come into possession of her stake under the arrangement of 1904. In these circumstances, the abstention of England was expected. Germany, however, had forgotten that if she had her grievances against England, England was in a state of similar irritability owing to the constant increase of the German navy and the intimations of German writers recorded by excitable English writers that the object of these increases was to dispute British supremacy at sea. As regards other countries, in France a certain number of wild young patriots and unwise older ones thought that to excite German hostility was good sport. As a fact, however, France is involved in the War only through her alliance with Russia, and as regards Russia herself, it is difficult to see what problem, difficulty or ambition it was possible to solve or realise by a war, whatever its result, unless dynastic objects were concerned, and in that case the German declaration of war may have been a prolongation of the life of a tottering dynasty.

Still, while actual facts warranting recourse to war are conspicuously absent, the War has brought tendencies, feelings and ambitions to the surface which are now so strongly marked that they can only be accounted for by the assumption that they have been accumulating energy while in a more or less latent condition. This would explain the extraordinary popularity of the War not only in Germany, but in England and even in France and, if I am rightly informed, at the beginning also in Russia and Italy. I do not, in saying this, mean to suggest that the War might not have been averted or that it is less a calamity because it appealed to different national sentiments.

As between Germany and England it has been waged with an animosity so unprecedented that one must look for explanation elsewhere than in the more or less factitious hatred begotten of war in general. On the German side, it has made thinkers whose processes of thought have influenced the mind of man throughout the world belie their intellectual independence and assume a hostile attitude towards a nation whose whole polity stands for those rights of independence and justice which most of them have themselves championed. Among the Anglo-Saxons, it has taken the form of "black-guarding" the enemy in a manner quite foreign to their traditions of chivalry and sport.¹

¹ In a country of voluntary service, allowance must of course be made for the fact that appeals for recruiting purposes are necessarily highly coloured and that many newspapers actuated by the patriotic desire to increase the multitude of our fighting forces may not have exer-

Fortunately for civilisation and for the good name of England and America these exaggerations of language were not translated into action and the tradition and spirit of their armies in spite of, perhaps on account of, its mainly civilian character, remained as chivalrous and sportsmanlike as ever.

The object of war being to bring it to its own conclusion, the shorter it is the less inconvenience it causes to the community and the less ultimate slaughter and suffering to the forces engaged. Unless the sources from which it can be sustained are paralysed and the trade and profit-earning resources of a nation crippled so that the war can strike at the national revenue, money will flow into the treasury and the fighting can continue. The civilian, in general, claims relative exemption from the evils of war and efforts have been made by humanitarians to attenuate the evils of war for him; but in every war he is indignant at having to suffer at all from its effects. With the development of the interdependence of nations and the universal adoption of national military service the civilian becomes more and more involved in its consequences, and the prospects are that he will become rather more than less a victim of them.

When a duel is fought the seconds stand watching every thrust and parry to prevent the antagonists in the excitement of the fight from violating the rules of combat. But for their vigilance,

cised all the discrimination they would use in peace time in the selection of their news.

the combatants are exposed to losing their self-control and disregarding the rules. In war the neutrals are the seconds. / In this War the seconds have not been strong enough to call the combatants to order and eventually have joined in it themselves. Thus we have had a *mêlée* in which the thin voice of impotent onlookers has only been a source of further irritation to combatants, smarting from wounds and the more angry because they felt their own inability to recover their reason.

International law, in so far as it treats of war, is essentially the work of neutrals. In time of peace all are potential neutrals and owing to this much of international law has been codified by agreement and these agreements, however much they have been violated, are still acknowledged by belligerents to be binding upon the parties to them. Subject to these agreements publicists try to ascertain what the practice is and endeavour to bring it into such harmony with European morals as the character of war permits.

This was the method of Grotius at a time not unlike the present, when war as ruthless as that of the World's War was devastating Central Europe. When his famous book appeared in 1625, the war was ten years old and had still twenty to run. The memory of the atrocities, cruelty and extortions of the League has descended to posterity and still brands with infamy the names of Wallenstein and Tilly. They excited the indignation of the mankind of that age, and Grotius, subject of a neutral State, produced his famous book as a revolt against

the ruthlessness of these military commanders. The more humane and generous Gustavus Adolphus approved this attempt to attenuate the horrors of war. The sack of Magdeburg, the burning of the city, and the massacre of twenty thousand of its citizens some six years after the appearance of "*De Jure Belli ac Pacis*", however, show, as in the recent War, how little respect commanders in the field have for the requirements of law and humanity.

To deal effectively with the problems involved in the consideration of terms of peace calculated to avert danger of war in the future, the public must constantly bear in mind that a distinction exists between the causes and the occasions of war. I repeat this, not because I claim to be the discoverer of what is obvious when attention is drawn to it, but because a whole system proposed for insuring the world against the repetition of similar catastrophes is based upon the prevention of occasions of war instead of upon removal of the causes of war. The failure of the peace movements of a generation of civilised mankind, in fact, is due to concentration of effort on arbitration and other methods of dealing with incidents of international trouble and not with causes. It seems hardly necessary to labour a point on which all pathology is based, and statesmen, in dealing with the life and polity of mankind, can only follow with safety the analogies of individual human life.

In the endeavour to deal with causes the statesmen of the respective negotiating nations will do well to give their adversaries credit for equally sincere desires to do their best for their own countries. They are all subject to suspicion of each other's objects, all necessarily more or less ignorant of each other's difficulties and all in charge of undertakings involving knowledge, capacity and a sense of responsibility out of proportion to any they have been able to attain in an official or political career. They are subject to fits of alarm and panic like other human beings, and just as subject to nervous breakdown and hysteria.

For the discussion of the conditions of permanent peace, even patriotism is a disqualification if combined with ignorance of the subtle influences exercised by the physical, social, historical and industrial circumstances of different countries on the minds of their peoples and statesmen.

Assuming that the primary object of negotiations for peace is the attainment of a peace which will have as permanent a character as the foresight of living men can achieve, the following principles seem calculated to serve as a basis of effort for its attainment:

1. The avoidance of solutions which create or which will or may be reasonably expected to create a national grievance or grievances present or future;
2. The avoidance of solutions which may reasonably be regarded as having a humiliating character;
3. Consideration for reasonable claims of any

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State which do not essentially curtail the reasonable realisation by another State of its geographical and economic requirements.

On these principles the analysis of the situation to which the present book is devoted will more or less be based.

NOTES TO INTRODUCTION

NOTE ON IMPERIAL VIOLATION OF GERMAN CONSTITUTION

The apparently cynical effrontery of the German Declaration of War to France reminded one at first sight of the provocation of the Capulets. It read :

"The German administrative and military authorities have established a certain number of flagrantly hostile acts committed on German territory by French military aviators. Several of these have openly violated the neutrality of Belgium by flying over the territory of that country ; one has attempted to destroy buildings near Wesel ; others have been seen in the district of the Eifel ; one has thrown bombs on the railways near Carlsruhe and Nürnberg.

"I am instructed and I have the honour to inform Your Excellency, that in presence of these acts of aggression the German Empire considers itself in a state of war with France in consequence of the acts of this latter Power."

Louis XIV would have said : "*C'est mon bon plaisir*," but there was a reason for this nonsense not very flattering to the political intelligence of those to whom it was addressed. The Imperial Constitution (Reichs-Verfassung) provides (Article 11) that the Emperor "declares war and concludes peace in the name of the Empire." "For the declaration of war, however, the consent of

the Imperial Council (Bundesrat) is requisite, except in case of attack on imperial territory or on the coast." Article 63 adds that the whole armed force of the Empire, in time of war as in time of peace, is under the orders of the Emperor.

It is not without significance, therefore, that the denial, later on, that any bombs were thrown near Nürnberg or elsewhere in Bavaria came from the country whose concurrence in the War was thus forced.

NOTE ON DIPLOMACY DURING THE WAR

With the progress of the War the presence in it, as regards Germany, of Russia became as accidental as the Austro-Hungarian quarrel with Serbia. Her war was with Austria-Hungary. With the latter she was carrying on practically an independent though parallel war, in spite of Germany having been the first to throw down the gauntlet. It soon became obvious that both Russia and Austria-Hungary were likely to have enough internal difficulties to occupy them at home to negative any effective coöperation as partners of the Western belligerents.

In the diplomacy of the War, the question for the Western belligerents thus came to be whether the loss of Russian coöperation would not be more than amply compensated by the effect of the collapse of Austria-Hungary on the German ability to continue the struggle. Hence, probably, the persistent refusal of France, England, and Italy to listen to repeated overtures to enter into separate negotiations with Austria-Hungary which might have brought the War to an end as early as February, 1915.

Whether the diplomacy of the Allies was well-considered, judicious or based on accurate knowledge of the state of Central Europe, it is premature to discuss. All that

can meanwhile be said is that judging by impending possible consequences it seems probable that they would have been less fatal in all the belligerent countries, if peace had been made before the calamities of war had undermined the foundations of modern European polity.

CHAPTER I

PAST AND PRESENT

"THE past and the present are in deadly grapple and the peoples of the world are being done to death between them," said President Wilson in his speech delivered at the tomb of Washington on July 4, 1918.

He had just before stated: "There must now be settled once for all what was settled in America in the great age upon whose inspiration we draw to-day." Washington and his associates had consciously planned that "men of every class should be free", and the President summed up the ultimate goal of American intervention in the words:

"What we seek is the reign of law based on the consent of the governed."

In the view of America's spokesman, if I read his different utterances aright, the recent War has not been a war for social betterment. It was a war for political betterment. Nobody would deny that Germany possesses an elementary education, methods of promoting research, and a variety of intermediate stages affording means for the development of the individual which other nations may

envy. Nor would anybody deny that Germany's efforts to cope with pauperism and disease have been a subject of admiration to the whole world of experts in such matters. Nor would anybody even deny that German statesmen, and first among them Kaiser William II himself, have strenuously and unremittingly sought to give every German his share in the comforts of life, and, in short, that the German people, under the fostering influence of an efficient and conscientious government before they were plunged into war, enjoyed, along with an extraordinary prosperity, social welfare appreciated universally.

But what boots all this prosperity and social welfare if enjoyed under a system that by a stroke of the pen can cast all the progress of generations into a whirlpool of devastation; that, by merely turning a handle, can open the sluices and sweep away in a flood of bloodshed not only the work of our own age, but that created by the toil, art and wisdom of our forefathers; that can jeopardise not only prosperity and social welfare at home but overwhelm in an artificial catastrophe nation after nation, bringing ruin, misery and mourning into the homes of all mankind!

The Kaiser, in a speech delivered a few days (June 16) before that of the President from which I have quoted above, contrasted civilisation based on two different *Weltanschauungen* — the German principle which seeks to promote the virtue and value of the individual and the Anglo-Saxon which leaves the individual at the mercy of its capitalist

ruler. With the unconsciousness of the "beneficent tyrant" he did not see the real issue. He did not seem to know that the Anglo-Saxons have borrowed, and gratefully so, much in the realm of social progress from Germany and that the present struggle is not against Germany, nor against his or their social principles, but is against a system of which he has the misfortune to be the presiding genius.¹

That I take to be the President's message to the German people, to whom America comes as a saviour as much as to the rest of Europe. The enemy of all mankind, of universal man, is the power to destroy. That power to destroy belongs to the past. All arbitrary power to let loose the forces of destruction left to rulers and governments is a survival of periods when wars were waged in the interest of dynasties and peoples were slaughtered for causes in which they had no concern; of an age when might was the only right respected as between sovereign and sovereign. Populations then, as pieces on a chessboard, were moved about as suited the fancy of the players, diplomacy laid its plans with deceit on its lips, and governments acted as if they were not bound in their relations with

¹ Under the heading "Opposition of the German Government: Friendship toward the German People" see President's message to Congress, April 2, 1917:

"We are, let me say again, the sincere friends of the German People, and shall desire nothing so much as the early reestablishment of intimate relations of mutual advantage between us — however hard it may be for them, for the time being, to believe that this is spoken from our hearts. We have borne with their present Government through all these bitter months because of that friendship — exercising a patience and forbearance which would otherwise have been impossible."

each other to respect their engagements and act honourably, but as if they were licensed to prostitute the noblest names and qualities in the service of objects long since banished from intercourse among civilised individuals. These are the things America had entered the "death-grapple" to exterminate.

A close examination of the fourteen points laid down by President Wilson in his address of January 8, 1918, reaffirmed in the four of that of July 4, 1918, and the five of that of September 27, 1918,¹ reveals several underlying principles which may be considered as constituting the foundation of the President's programme. This programme the Allies have adopted with one reservation in its entirety. That reservation referred to in Mr. Lansing's reply to Germany of November 5, 1918, relates to the second of the President's fourteen points. In the same letter a principle has been added, viz. : that of compensation for damage done to civilian property.

A synthesis of the points is therefore indispensable to the proper understanding of the matters, questions and problems of peace.

As enunciated in the fourteen and completed in the others they may be summed up as follows :

1. No secret international agreements (1 — also one of the five) ;
2. Freedom of the sea and its channels (2, 12 — subject to reservations referred to in Mr. Lansing's letter of November 5th) ;

¹ See Notes to the present chapter. President Wilson's principles and Mr. Lansing's letter confirming their adoption by the Allies.

3. Most favoured nation treatment to be generalised (3 — also one of the five);
4. Restriction of armaments (4);
5. Acquiescence of populations in all matters affecting sovereignty over them (5, 6 — also one of the four);
6. Abolition of the "right of conquest" (7, 8, 11 — also among both the four and the five);
7. Access to the sea a right of all States (11, 13);
8. All States as settled by the Treaty of Peace to be guaranteed an equal right to their independence and integrity (14 — also among the four);
9. Racial homogeneity of population to be a ground of adjustment of frontiers (9, 12).¹

These I take to be the principles which have been agreed to as such by the Allies. Details are matters for negotiation, and by details I mean the application to each individual case of such of the principles as expediency warrants or dictates. Thus, principle Number 5 may in some instances conflict with principle Number 9; Number 3 may not always tally with Number 8, some of them may not be capable of universal application. Nevertheless they

¹ The President distinguishes between "must" and "should", and the first six points, those of general application, he gives as "heads" only.

Belgium "must" be evacuated, but of "French territories" he says the invaded portions "should" be restored and the wrong done to France in 1871 in the matter of Alsace-Lorraine "should" be righted. Of Italian, Slav, Rumanian, Serbian, Montenegrin, Polish and other claims he uses the same conditional "should." Even of the permanent opening of the Dardanelles to the ships and trade of all nations he uses it. Of the Society of Nations he states it "must" be formed.

constitute the main lines on which it has been promised to European democracy a resettlement of Europe shall be based.

Alongside these pledges of the governments of the Allies to the democracies of the world there are necessarily generalisations or principles¹ to which all political effort is as subject as surgery is to nature.

I have picked out some such generalisations or principles which seem to apply to present circumstances and submit them for consideration. They are as follows :

1. The movable or changeable yields to the immutable; therefore, in a conflict between racial and geographical considerations, the latter necessarily prevail;

2. Natural boundaries are such as offer the minimum of obstacles to their preservation as such; therefore navigable rivers, being highways of commerce, do not afford the requisites of natural boundaries;

3. An independent State is entitled to enjoy

¹ If of any practical value at all principles are at best generalisations, but the use to which they are generally put in politics is that which appears, for the time being, to be in the interest of those whose action they seem to justify.

Louis Blanc, a man of sincere devotion to principles, writing of the intervention of France in Spain in 1823, in spite of its cruelty and reactionary character, said, "lorsque un gouvernement croit représenter une cause juste, qu'il la fasse triompher partout où le triomphe est possible; c'est plus que son droit, c'est son devoir." ("Histoire de dix Ans," édition de 1846, t. I, p. 112.)

He was in the middle of a period when cosmopolitanism and internationalism were forces of reaction against three powerful autocracies which sought to determine the destinies of Europe. His principle was just as handy a weapon for the one side as for the other.

NOTES TO CHAPTER I

PRESIDENT WILSON'S PROPOSITION AS ACCEPTED BY THE ALLIES

The fourteen points of January 8, 1918, were :

1. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.
2. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.
3. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.
4. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.
5. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.
6. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will

secure the best and freest coöperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

7. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.

8. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

9. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

10. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity of autonomous development.

11. Roumania, Serbia, and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan states to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic independence and territorial integrity of the several Balkan states should be entered into.

12. The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

13. An independent Polish State should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

14. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

The four points of July 4 were:

1. The destruction of every arbitrary power anywhere that can separately, secretly, and of its single choice disturb the peace of the world; or, if it cannot be presently destroyed, at least its reduction to virtual impotence.

2. The settlement of every question, whether of territory or sovereignty, of economic arrangement or of

political relationship, upon the basis of the free acceptance of that settlement by the people immediately concerned, and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery.

3. The consent of all nations to be governed in their conduct towards each other by the same principles of honour and of respect for the common law of civilised society that govern the individual citizens of all modern States, and in their relations with one another, to the end that all promises and covenants may be sacredly observed, no private plots or conspiracies hatched, no selfish injuries wrought with impunity, and a mutual trust established upon the handsome foundation of a mutual respect for right.

4. The establishment of an organisation of peace which shall make it certain that the combined power of free nations will check every invasion of right, and serve to make peace and justice the more secure by affording a definite tribunal of opinion to which all must submit and by which every international readjustment that cannot be amicably agreed upon by the peoples directly concerned shall be sanctioned.

The five points of September 27 were :

1. The impartial justice meted out must involve no discrimination between those to whom we wish to be just and those to whom we do not wish to be just. It must be a justice that has no favorites and knows no standard but the equal rights of the several peoples concerned.

2. No special or separate interest of any single nation or group of nations can be made the basis of any part of the settlement which is not consistent with the common interest of all.

3. There can be no leagues or alliances or special covenants and understandings within the general and common family of the league of nations.

4. And more specifically, there can be no special, selfish economic combinations within the league and no employment of any form of economic boycott or exclusion except as the power of economic penalty by exclusion from the markets of the world may be vested in the league of nations itself as a means of discipline and control.

5. All international agreements and treaties of every kind must be made known in their entirety to the rest of the world.

Mr. Lansing's letter was as follows :

WASHINGTON, November 5, 1918

* * * * *

In my Note of October 23, 1918, I advised you that the President had transmitted his correspondence with the German authorities to the Governments with which the Government of the United States is associated as a belligerent, with the suggestion that, if those Governments were disposed to effect peace upon the terms and principles indicated, their military advisers and the military advisers of the United States be asked to submit to the Governments associated against Germany the necessary terms of such an armistice as would fully protect the interests of the peoples involved and insure to the Associated Governments the unrestricted power to safeguard and enforce the details of the peace to which the German Government had agreed, provided they deemed such an armistice possible from the military point of view.

The President is now in receipt of a memorandum of observations by the Allied Governments on this correspondence, which is as follows :

"The Allied Governments have given careful consideration to the correspondence which has passed between the President of the United States and the German Government. Subject to the qualifications which follow, they declare their willingness to make peace with the Government of Germany on the terms of peace laid down in the President's address to Congress of January 8, 1918, and the principles of settlement enunciated in his subsequent addresses. They must point out, however, that clause 2, relating to what is usually described as the freedom of the seas, is open to various interpretations, some of which they could not accept. They must, therefore, reserve to themselves complete freedom on this subject when they enter the peace conference.

"Further, in the conditions of peace laid down in his address to Congress of January 8, 1918, the President declared that invaded territories must be restored as well as evacuated and freed. The Allied Governments feel that no doubt ought to be allowed to exist as to what this provision implies. By it, they understand that compensations will be made by Germany for all damages done to the civilian population of the Allies and their property by the aggression of Germany by land, by sea and from the air."

I am instructed by the President to say that he is in agreement with the interpretation set forth in the last paragraph of the memorandum above quoted.

I am further instructed by the President to request you to notify the German Government that Marshal Foch has been authorized by the Government of the United States and the Allied Governments to receive properly accredited representatives of the German Government, and to communicate to them the terms of an armistice. . . .

CHAPTER II

FOREIGN POLICY

THE policy of a nation necessarily reflects more or less the national character behind it. Those who direct it are merely average citizens who have been selected without reference to any special ability from a number of men who had originally obtained entrance into the diplomatic service by an examination test in average general knowledge. After this intellectual test come the influences begotten of school and family connections on the one hand and an average intelligent obedience to higher officials who have gone through the same or similar tests and training on the other. The traditions of any office thus necessarily tend to become stereotyped and the mode of giving effect to them may be predicated with relative accuracy by any observer who is familiar with the average national intellect and more particularly that of the class concerned.

In England the average intellect is dull but honest. School life is based on the development of character and a robust sort of honour which easily takes the external form of arrogance. The reputation abroad of British diplomacy is, however,

and therefore, that though arrogant, it is straightforward, well-meaning and trustworthy. In Germany diplomacy has endeavoured to follow the English example but the basis is different. Early training in that country is occupied with the acquisition of exact knowledge and habits of intellectual accuracy and the average German has a much more effective culture than the Englishman. The development of character is neglected and boys do not acquire in school that individual sense of honour which distinguishes English training. In many cases they are encouraged to play the part of traitor to each other. The master does not respect the privacy of the child nor are children expected to respect it among themselves. A child who reports the evil doings of a companion is not reproached, the principle being that the teacher ought to know everything about every child to be able to correct shortcomings before they grow into habits.

This method has spread into the whole life of Germany. Clerks spy upon each other in offices; soldiers, even officers, spy upon each other in their daily life, and a faculty for spying has factitiously become characteristic of a whole people. Even in the exalted *entourage* of the Kaiser himself, there is none of that discreet respect for private conversation which is part of the training of the upper and higher middle-class Englishman. Yet in Germany to be like an Englishman is or was the aim of every well-born German.

Among delusions nursed with admiration in Germany and fortified with historical examples

is the idea that a ruthless pursuit of self-interest is the source of England's success among nations. This had developed into the worship of force and necessity. Necessity is merely a way of expressing that something is highly desirable and the use of force is justified to secure what is highly desirable. If physical force is not available or applicable, then superior cunning takes its place.¹

German diplomacy bears the marks of these initial shortcomings and while it brings a much more exhaustive and more accurate knowledge to bear in the treatment of international questions than the English, it falls far short of it in the faculty

¹ A German manufacturer once showed me a card-box of handkerchiefs he had manufactured. Inside the box was a card bearing the words "Made in England" with initials. This had been inserted by the middleman. My friend did not condemn him as a rogue but explained to me that the only way to get Germans to buy certain goods was to pass them off as English. Necessity justified the roguery or, as my friend said to call it, the stratagem, for the goods, he said, were certainly of better quality than could be had for the price had they been really "made in England."

Another case of similar roguery was practised by one of the largest firms of electrical apparatus manufacturers. They formed a small English company with an English name and paid a couple of Englishmen salaries to act as directors. They then issued their machines with the name of this English firm. The disk which bore its name was so formed that the words "Made in Germany" could be clipped off while leaving the disk intact. The obvious object of this was to cheat the ultimate purchaser into thinking he bought a machine of English manufacture. "Necessity", said the manager. The English purchaser wanted a good quality of machine. He had the mistaken notion that he could get this only from an English house. They created an English house to satisfy him and they merely used the addition to the disk to pass the Customs. The purchaser obtained a better article than he could have bought for the money if it had been made in England. He was not robbed. Far from it. He was merely humoured!

of inspiring a sense of its honesty, or respect and consideration on the part of others.

From the point of view of general culture the French diplomatist is superior to both the English and German and he has the intellectual and social gifts of most Frenchmen which make him a favourite in every *milieu* into which he tumbles. As a diplomatist he is "to the manor born" and if the pursuit of diplomacy were exclusively one of making friends for one's country, which it largely is, the French diplomatist would be easily first. In dealing with difficulties when they arise, however, French diplomatists are not equal to the cool-headed and obstinate Englishmen or to the accurate but more or less unscrupulous diplomatists of Germany.

The diplomacy of the United States is based on a different principle from that of England, France or Germany, viz. : that of more or less permanency of the staff and subjection of the diplomatic chiefs to the party system. An American ambassador or minister plenipotentiary, like a member of the Cabinet, is regarded as having a close connection with the presidential policy and as such he is chosen from among his trusted political supporters. Though they have not always been successes, the same may be said of *carrière* diplomatists, while many of the American diplomatists have shown a greater ability for the understanding of their country's material interests. The system of permanent counsellors, moreover, has proved its value and is worthy of accentuation as regards both prestige and rewards.

led to the capsizing of the whole monarchical system in three empires without an attempt to save it.

With the weakening of authority grew up the theory of the continuity of foreign policy — a continuity expounded by Lord Rosebery and materialised by Sir Edward Grey but practised in France long before either. It seems destined to undergo the transformation which the undertaking of governments to abandon secret diplomacy implies.

Foreign offices have always had traditional policies, simply because they “descend” from official to official and involve the least individual initiative. No doubt if an incoming Ministry considers that the policy of its predecessors exposed the country to dangerous or costly difficulties, it is not likely to be guided by any theory of continuity or to refrain from a critical examination and balancing of the advantages and disadvantages of any previous line of conduct; and a strong Foreign Minister can shake off superannuated traditions and stereotyped attitudes towards other countries. But after a Foreign Minister has been inhaling a Foreign Office atmosphere for a certain time, he seems, in spite of himself, to become sooner or later inoculated by it. Thus, even a far-seeing statesman like the late Lord Salisbury, when he was approached, in 1901, by a very distinguished Frenchman as to placing the relations of his country and France on a permanent footing of amity, curtly replied: “C’est de l’utopie.” It was the superannuated

tradition of the British Foreign Office to regard France as an uncertain quantity, "one thing one day, another thing another", with a policy as fluctuating as her governments, and a political pendulum swinging wildly and sending the world round at far too great a speed for its good.

The Foreign Office official is necessarily more or less bound by knowledge collected from the diplomatic missions abroad. The chiefs of such missions, however, seldom have any opportunity, even if they remain long enough in any post, of obtaining an intimate acquaintance with the country to which they are accredited. As a rule they are the last to know what is happening of importance to them because they are conspicuous.¹

Exceptions, of course, there have always been. Lord Lyons was one, another was Lord Lytton, who had a keen understanding of French character. Nevertheless he did not succeed in breaking the continuity of British policy towards France or in reacting against the obvious Franco-Russian policy which a recent French "yellow book" has shown to have been in process of secret formation unsuspected by him and the continuity of which, by the way, might have exposed France to disaster but for the accession to it of England, against whom the policy was more or less calculated to operate.

It is barely twenty years since the relations between Great Britain and France underwent this change. Popular feeling, which had been whirling

¹ A French diplomatist once described his position to me as that of a man going about with a danger warning on his top hat.

round a vortex of indignation and hatred, as if the two nations were moved by subterranean forces as uncontrollable as those of unconscious Nature itself, exhausted itself and on the wave of reaction a new feeling was fostered by an active agitation which brought about a break in the continuity of the policies of both France and England and saved both from the horror of a war as terrible as the one which has just been brought to a close.

The rise of Germany was a new and inconvenient factor in the official scheme of British policy. That she had a foreign policy at all, not to speak of a "Welt-politik", which had to be reckoned with, aroused a sort of unconscious indignation at disturbance of time-honoured habits of political thought and the older foreign offices tried to deal with old problems which had existed before Germany as a "Welt-staat" came upon the scene, without taking her into consideration.

More suppleness, more accurate knowledge, more publicity, a wider-spread public interest in foreign affairs, a greater influence of the back benches of parliaments in external relations would possibly save nations from repetition of some errors, but the insistence by democracy on parliamentary control is the most promising reform on the horizon, because it may counteract the danger of drifting into those "spirited" foreign policies which ingenious, ambitious but irresponsible heads of departments are prone to cultivate in the privacy of their offices and in which often a political chief finds

himself entangled before he has mastered the details, complications and reactions of the national interests.

One of the most dangerous consequences of detachment of diplomacy from parliamentary control is the discretion left to Foreign Offices to enter into secret engagements binding States to coöperation and pledging their future often even without reference to the Cabinet itself, as we have seen revealed in the above-mentioned French "yellow book" on the Franco-Russian alliance.

NOTES TO CHAPTER II

NOTE ON PUBLIC OPINION AND FOREIGN POLICY IN ENGLAND

The influences which affect British public opinion in international policy at present seem to be :

(1) The Foreign Office itself, which has a sort of traditional line of conduct in regard to each country and question, and of which the Foreign Minister is the spokesman ;

(2) The responsible Press which looks for guidance to the Foreign Office clerks to whom its writers have access ;

(3) The more or less competent critics who examine questions freely in the reviews and a few members of the House of Parliament who take an interest in such subjects and some of whom, though possessing more than usual competency, are heard, occasionally at any rate, within the Houses themselves.

NOTE ON INTEREST OF BRITISH PRESS IN FOREIGN POLICY

In his valuable volume entitled "Common Sense in Foreign Policy", page 4, Sir Harry Johnston observes :

"The new press has concerned itself more and more with questions of Foreign Policy. Leading articles and *communiqués*, inspired by the highest authorities in England and potentates abroad, have begun, with the

new century, to appear in other journals as well as in the *Times*: In the *Daily Telegraph*, *Daily Chronicle*, *Morning Post*, *Daily Mail*, *Daily Graphic*, *Standard*, *Westminster Gazette*, *Pall Mall* and *Star*; In the *Manchester Guardian*, *Yorkshire Post*, *Scotsman*, *Northern Whig* of Belfast, *Birmingham Post*, *Western Morning News* and *Liverpool Courier*."

NOTE ON GERMANY'S AND RUSSIA'S GEOGRAPHICAL SITUATION

Germany was sandwiched in between England and the Russian Empire. Both held positions which the War is not likely to change essentially, because of their situation both demographically and geographically. The one has an overflowing population in an overcrowded area and the other an immense area, thinly peopled. Germany was becoming overpeopled but her overflow tended rather westwards than eastwards, because German industrial education turned out artisans more in demand in highly civilized than among under-civilized peoples, not to speak of their own preference for countries not subject to either political or religious persecution.

As regards Russia, it may be useful to consider her geographical position in connection with her foreign policy. Russia is ice-bound for several months of the year. Archangel is closed to traffic from September to April, Kronstadt from December to April and Vladivostock sees its shores covered with a thin crust of ice from December till April, though the Peter the Great Gulf on which it stands does not freeze.

Russia's attempt to get into the Pacific at Port Arthur was frustrated by Japan, her attempts to reach Constantinople were frustrated by the Western Powers, and to reach the Persian Gulf by England.

Russian statesmen, obliged to keep foreign war in reserve for the maintenance of autocracy, have made it a principle of their foreign policy to seek an outlet to ports accessible to navigation throughout the year, and owing to lack of opposition to expansion eastwards across Northern Asia, Russia has extended her dominion across the vast continent to the ocean.

Russia is now confronted on the eastern as well as on western sides by Powers which are in greater need than she of colonisable areas for their growing populations. On the east as on the west, she is being driven from the sea. This lateral pressure may bring Russia to concentrate her policy on the historic effort southwards. The dangers to the future of closing the valves of expanding population or trade are too obvious to require emphasis and are still too vague to be dealt with in detail. It is to the interest of the future that they shall not be overlooked.

CHAPTER III

DIPLOMACY, SECRET TREATIES AND NEGOTIATIONS

PRESIDENT WILSON has evidently concluded after careful examination of numerous historic cases that secret clauses hidden from the public view and entered into for the purpose of disguise of some kind are a danger to peace and has therefore prescribed among his conditions of peace :

“Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.”

The President no doubt had more especially in view the different agreements between Germany and Austria-Hungary, the more or less secret nature of which excited distrust throughout Europe at the time and led to the dividing of Europe into two hostile camps under the guise of a “balance of power”, which less acute historians had not perceived had never led, either in Greek times, or in Italy when the idea was revived, or in the eighteenth century in northern Europe, or, as has now been shown, in our own times, to the assurance of peace but always ultimately to war.

And with that independence which characterises him, the President has no doubt had misgivings as to what may have been the effect of the secret clauses annexed to the Anglo-French agreement of 1904, which potentially negated the effect of the agreement published to the world. As it is possible that the President had these clauses, which affected the trade of the United States, as they did all other trades, also in view, I may remind the reader that they related to Egypt and Morocco and that the two contracting powers agreed that any alteration of status of the one Power, viz.: Great Britain in Egypt; or of the other, viz.: France in Morocco, would release them from their reciprocal self-denying engagements. In other words they foreshadowed the protectorates and practical annexations which have now been effected.

He has now further material for reflection in the revelations made in the new French "yellow book" as to secret engagements between the French and Russian governments which were hidden for several years entirely from the public view, and the exact nature of which has only just been made known.

Apart from the fact that to conceal any international engagements binding a nation is an insult to its intelligence, concealment is a violation of a first principle of democratic government, viz.: that national consent, direct or indirect, can alone pledge it to action. No doubt the advocates of a different view maintain that in the process of evolution democracy necessarily inherits the practices

of foreign offices and diplomacy and thus also gives tacit consent to that practice till deliberately cancelled. Mr. Wilson would, no doubt, reply: It is time to cancel it deliberately. But, before finally making up our minds to pole-axe the abomination, let us look a little more closely into the subject and try, at any rate, to avoid regretful precipitation.

It must, I think, be conceded that the object of secrecy is necessarily to conceal an ultimate purpose, object or contingency from the knowledge of others whose interests might lead them to raise objections, or take up some antagonistic attitude. Merely to suspect or have good reason to suspect the existence of secret clauses, though their precise character be unknown, may therefore lead, even oblige other governments to take action or prepare to take action to protect their interests and defeat the suspected purpose.

Who, for instance, knows whether possible secret understandings between the German and other governments with a view to appeasing the former after discovery of the secret clauses of 1904, suspected understandings which at the time excited the Portuguese Government and shortly afterwards startled the Italian Government, were not at the bottom of Italy's anxiety to set up a *fait accompli* against any attempt to frustrate another secret understanding which had recognised her priority in the Tripolitaine whenever it should be available, and did not lead her, with such unseemly and unjust precipitation, into the war with Turkey?

Without much casuistry it would be possible to connect these secret agreements, understandings and eventualities with one another and evolve out of them a sequence of cause and effect culminating in the complete breakdown and present discredit of European diplomacy which instead of averting bungled into mere bludgeonry.

One more word about secret clauses before we pass to another aspect of secrecy: It is difficult to keep them secret for long. Any one who, like myself, has made a lifelong study of diplomacy and its methods, especially as an outsider unbound by Foreign Office restrictions, will testify that there is no such thing as absolute secrecy. The fact that several persons are necessarily "in the know" or more or less "in the know" soon begets a rumour. The rumour spreads, the suspected clauses grow in magnitude with the effect to justify apprehension, and eventually they lead to that vague unrest to which international trouble can nearly always be traced. President Wilson is right to place them at the top of the scale in his attempt to summarise the matters affecting the future peace of the world.

When President Wilson says "diplomacy shall proceed always frankly and in the public view", he has no doubt in mind the American system of addressing Congress and the nation at every step in the progress of any matter of foreign policy, a system of which he himself is not only a consistent exponent but has shown himself a consistent practiser.

Interpretations may have warranted the idea that President Wilson aimed at the suppression of diplomatic action and that, in connection with negotiations for peace there must be no privacy. This is certainly a misconstruction. The President cannot but know that in the course of a war or even in the midst of any ordinary heated international controversy, argument in public is necessarily tinged with its glow and it is in the detached coolness of privacy and even secrecy alone that preliminaries and details can be effectively discussed.

I have been so often behind the scene of such diplomatic preliminaries that I can bear witness to a practice which we might call a method, were it not simply the necessary consequence of circumstances beyond need of an act of volition.

The first step to peace in the course of a war is the *prise de contact*. This may be through a common neutral friend or through two friends technically enemies. Several efforts of this kind had been made during the recent conflict. If they have failed, it has been through faulty selection of men, error in the choice of the moment, or through attempting to start negotiations before the *prise de contact* was firm. To make a *prise de contact* effectual, it is essential that it shall be absolutely secret, covered by some different object which conclusively explains it, such as meeting to arrange exchange of prisoners or their treatment, or to deal with Red Cross understandings, or for any other purpose, official or private, which can serve to disguise the object. Any open proceeding would obviously

create false hope and might seriously interfere with the national *morale*, which as every one knows counts for much in the prosecution of war.

The *prise de contact* satisfactorily established, the belligerents can talk with one another and seek jointly the bases of negotiation. If these secret non-binding agents are two old friends, as may be — as ought to be — the case, they will know one another well enough to venture on frankness. The secret history of wars of the past has shown the difficulty of reaching even elementary bases of negotiation. It took ten years of such efforts to bring the Powers engaged in the Thirty Years' War down to the point of signing preliminaries. For before preliminaries are signed by accredited agents of their governments, the *prise de contact* must have eventuated in *pourparlers* of an unbinding character leaving negotiators and governments alike perfectly free, and this may involve many secret meetings before the propitious moment arrives when suitable draft preliminaries can be submitted and agreed to. Thereafter only can the official diplomacy safely step on to the stage.

It is not likely that President Wilson was opposed to a procedure which is also that of any important business operation in private life. All he probably had in mind was that no secret agreements be made finally binding upon nations without their knowledge and consent. The experience of late years and modern notions of democratic government cannot but encourage the President to insist on this publicity in the interest of civilised mankind.

Between secrecy and publicity there are many stages of privacy and discretion of a relative character and responsible Ministers take opportunities of lifting the veil in answers to questions in Parliament, communications through newspapers and speeches on the platform or at banquets. By a strange survival and anomaly, however, the British Parliament is practically the only parliament of any nation having pretensions to be regarded as "free" in President Wilson's sense that exercises no parliamentary control over the most momentous issues which can engage the lives, treasure and honour of a people.

It is true that there has been a revolt among younger and more progressive members of Parliament against leaving momentous international issues to the uncontrolled discretion of their respective Foreign Offices.

The only consequence down to now of this revolt has been to induce politicians to pay more attention than they have hitherto done to foreign affairs.

In France, in 1902, for the purpose of enabling private members to take an active part alongside the Ministers in the preparatory part of legislation and the examination of suggestions and amendments, sixteen grand committees were appointed, among which practically all the special work of Parliament was divided up. One of these deals exclusively with foreign affairs, protectorates and colonies. Members of it, it is true, complain that they are not consulted more frequently or more consecutively, but they, nevertheless, keep a close watch on the work which is in train at the

NOTES TO CHAPTER III

INVIOABILITY OF TREATIES

SUGGESTIONS FOR ADDITION TO THE AGREEMENT OF 1871

Whereas allegations of violation of treaty engagements are subject to so many qualifications and counter allegations that all the H. C. P. may confess to some measure of guilt in the past, and whereas for the future they all solemnly once more pledge themselves to strict observance of all Treaty engagements and agree to revive and uphold the protocol signed in London on January 17, 1871, which is as follows :

The Plenipotentiaries of North Germany, of Austria-Hungary, of Great Britain, of Italy, of Russia, and of Turkey, assembled today in conference, recognize that it is an essential principle of the law of nations that no power can liberate itself from the engagements of a Treaty nor modify the stipulations thereof, unless with the consent of the Contracting Powers by means of an amicable arrangement.

In faith whereof the said Plenipotentiaries have signed the present Protocol.

Whereas, however, it is not reasonable to bind States, under the more or less rapidly changing circumstances of the modern world to perpetual observance of all the engagements they may enter into with other States ;

Whereas it is one of the commonplaces of diplomacy to allege the absence of any moral cogency binding a Party to a Treaty obtained under duress ;

Whereas among the sanctions which have been proposed or suggested for enforcing observance of international agreements, none can have the weight of a solemn undertaking made freely before the whole world present and future to honestly and conscientiously observe such agreements and in case of unworkability or obsolescence, or desirability of release, to resort to some procedure for the revision of such agreements;

Whereas, therefore, to enable States to revise international agreements or any clauses thereof, not on juridical grounds but on grounds of expediency, alteration of circumstances, ethnical, demographic, commercial, social, hygienic or other;

It is agreed to make the following addition to the Protocol of 1871, viz. :

If any of the H. C. P. shall desire on any ground whatsoever to so liberate itself from any Treaty engagement or to obtain a modification thereof, it shall give notice accordingly to the other or all other Contracting Parties with a full statement of the grounds upon which such release or modification is demanded and the Contracting Parties shall within reasonable time reply thereto.

In case of any difference of opinion the respective statements shall be submitted for advice and recommendation to some authority to be created under the Constitution of the Society of Nations.

SUGGESTED AGREEMENT AS REGARDS SECRET TREATIES AND CLAUSES

Whereas the object of secret treaties or clauses is to conceal from parties other than those immediately concerned objects likely to excite the opposition of such others or be prejudicial to their interests;

And whereas when they come to light they necessarily

CHAPTER IV

EVOLUTION OF THE UNITED STATES' FOREIGN POLICY

WASHINGTON's famous Farewell Address is a much used and much abused document. Fragments of it are often quoted and from time to time the text is twisted into arguments more or less foreign to its nature. For more than a century it has served, in fact, as a guiding line for all the Presidents. As the basis of American foreign policy, it is necessarily the starting point of any study of this policy. Its language is so simple, clear and dignified and its counsels are so apposite to the present scheme that it would be mere supererogation to attempt to present it in any paraphrased abridgment or any but its own form. I therefore quote the whole of that part of it which is essential to this work :

"Here," said Washington, "perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude, urge me, on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments, which are the result of much reflection, of no inconsiderable observation, and

which appear to me all-important to the permanency of your felicity as a People. These will be offered to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel. Nor can I forget, as an encouragement to it, your indulgent reception of my sentiments on a former and not dissimilar occasion.

“Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

“The unity of Government, which constitutes you one people, is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence, the support of your tranquillity at home, your peace abroad; of your safety; of your prosperity; of that very Liberty, which you so highly prize. But as it is easy to foresee, that, from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment, that you should properly estimate the immense value of your national Union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the Palladium of your political

safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion, that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

“For this you have every inducement of sympathy and interest. Citizens, by birth or choice, of a common country, that country has a right to concentrate your affections. The name of American, which belongs to you, in your national capacity, must always exalt the just pride of Patriotism, more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have in a common cause, fought and triumphed together; the Independence and Liberty you possess are the work of joint counsels, and joint efforts, of common dangers, sufferings, and successes. . . .

“It is important, likewise, that the habits of thinking in a free country should inspire caution, in those intrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power,

and proneness to abuse it, which predominates in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the Guardian of Public Weal against invasions by the others, has been evinced by experiments ancient and modern; some of them in our own country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way, which the constitution designates. But let there be no change by usurpation; for, though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit, which the use can at any time yield. . . .

“Observe good faith and justice towards all Nations; cultivate peace and harmony with all. Religion and Morality enjoin this conduct; and can it be, that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great Nation, to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt, that, in the course of time and things, the fruits of such a plan would richly repay any temporary advantages, which

might be lost by a steady adherence to it? Can it be, that Providence has not connected the permanent felicity of a Nation with its Virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices? . . .

“Against the insidious wiles of foreign influence (I conjure you to believe me, fellow citizens,) the jealousy of a free people ought to be *constantly* awake; since history and experience prove, that foreign influence is one of the most baneful foes of Republican Government. But that jealousy, to be, useful, must be impartial; else it becomes the instrument of the very influence to be avoided, instead of a defence against it. Excessive partiality for one foreign nation, and excessive dislike of another, *cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other.* Real patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious; while its *tools and dupes usurp the applause and confidence of the people, to surrender their interest.*

“The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.

“Europe has a set of primary interests, which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies, the

causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities.

"Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient government, the period is not far off, when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality, we may at any time resolve upon, to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest, guided by justice, shall counsel. . . .

"In offering to you, my countrymen, these counsels of an old and affectionate friend, I dare not hope that they will make the strong and lasting impression I could wish; that they will control the usual current of the passions, or prevent our nation from running the course which has hitherto marked the destiny of nations. But, if I may even flatter myself, that they may be productive of some partial benefit, some occasional good; that they may now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign intrigue, to guard against the impostures of pretended patriotism; this hope will be a full recompense for the solicitude for your welfare, by which they have been dictated."

Whoever has carefully read this political "testament" of the first President of the State which had just been created will know more of the United States' policy than may be gathered from any other source. Washington's successors have drawn as much inspiration from it as from the Constitution itself. When the Cuban War brought the annexation of the Philippines, authors and politicians on both sides appealed to it, but never at any time was the morally binding nature of the Farewell Address called into question. In the case of the Philippines the issue was whether the United States should abandon for transient advantages the permanent advantage of their geographical situation on a continent completely detached from the other large continent which extends from the western extremity of Europe through Asia to Japan.

Mr. Wilson, like all his predecessors, has sought in the Farewell Address directions for guidance, in circumstances as critical as they may be deceptive. Washington had advised avoidance of any interference or partiality in European wars as a fundamental principle from which it would be dangerous to depart, of any partiality which might cause men to see danger on one side while seconding artifice or influence on the other. He had foreseen the time when the United States might have to adopt the attitude necessary to enforce respect for the neutrality they might have to declare, when belligerent nations would not lightly hazard the giving of provocation, when the United States might have to choose peace or war as their interest guided by justice might entail.

These counsels of wisdom are at the back of all President Wilson's pronouncements, behind all his actions and hesitations, and Press commentaries or criticisms have been rather commentaries on or criticisms of general principles of American policy than of the particular policy of the man who for the time being is the Chief of the Executive Power.

This policy of detachment and noninterference in European affairs necessarily implied the corollary that it was not expedient to allow European Powers to import into America their ambitions and quarrels. It became the privilege of President Monroe to give expression to this principle in the course of a message to Congress on December 2, 1823. It seemed opportune, he said, clearly to assert as a principle of the United States' foreign policy the proposition that "the American continents by the free and independent condition which they have assumed and maintain are henceforth not to be considered as subjects for future colonization by any European power. We owe it therefore to candor and to the amicable relations existing between the United States and these powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintain it, and whose independence we have on great consideration and

on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States."

This declaration of President Monroe, known as the Monroe Doctrine, was made at a time when the French Government was preparing an expedition to Spain. Mr. Canning, then British Secretary for Foreign Affairs, signified his country's intention to remain neutral on certain conditions, among which was the one that France should not attempt to annex any of the Spanish Colonies. The French expedition resulted in the reinstatement of the legitimist dynasty in Spain. Fearing a possible union between the two related dynasties, Great Britain declared that, though she would not intervene between Spain and her American colonies, she nevertheless considered that help given by any foreign Power to Spain's expedition against these colonies would constitute a new question in reference to which His Majesty's Government would take such decision as Great Britain's interest required.

Mr. Canning had already informed the United States' Minister in London, then Mr. Rush, of a proposal he had in contemplation to make after the French expedition to Spain, with a view to the holding of some congress, meeting or conference for the settlement of matters affecting South America. In his conversations on the subject with Mr. Rush,

Mr. Canning proposed that the United States Government should agree with the Government of Great Britain to protest against any action which might endanger the new South American republics. Mr. Rush, while admitting that any attempt on the part of France and the Continental Alliance to reassert European supremacy over the new republics would be "an act of national injustice disclosing a very alarming progressive ambition", was nevertheless of the opinion that to join Great Britain in the proposed protest would seem contrary to the traditional policy of the United States of standing aloof from European political affairs. Mr. Canning was insistent. The United States were the master power on the American continent. They were in close relation with Spanish America by their geographical position as well as with Europe by their intercourse; and they were also bound to the new States of South America by political ties. Was it possible that they could stand aloof while the fate of these new States was being settled by Europe? Had not a modification taken place in the United States' position towards Europe, which Europe itself was bound to recognise? Were the great political and commercial interests hanging on the fate of the new continent to be debated and directed in this hemisphere without the co-operation or even the knowledge of the United States? Were they to be debated and directed without some prior agreement between the United States and Great Britain, the two leading commercial and maritime powers of the two worlds?

On receipt of Mr. Rush's despatches, President Monroe sent Mr. Canning's correspondence to Mr. Jefferson and Mr. Madison, the most eminent American statesmen of the day, to ask their advice.

Mr. Jefferson's reply throws a certain light on the present policy to which, without laying too much stress on it, I nevertheless call the reader's attention.

The question was the most important that had been submitted for his consideration since the question of independence. "This one," said he, "made us a nation and the other will set our compass and point to the course we are to follow across the seas of time lying before us and never could we have sailed towards our goal in more propitious circumstances. Our first fundamental maxim must be never to obtrude upon European disputes; our second, never to suffer Europe to meddle with cisatlantic affairs. North and South America have a series of interests distinct from those of Europe and which are proper to itself. For that reason, Europe and America must have separate and distinct systems; while the former labours to become the seat of despotism, our efforts should certainly tend to make our hemisphere the home of liberty.

"One nation, especially, could disturb us in the prosecution of this goal and she now offers to guide, to help and accompany us. By acceding to her request we should detach her from European combinations, we should throw that nation's weight in the scales of free government and, at one stroke,

we should emancipate a continent which otherwise might languish for a long time in uncertainty and difficulties. Great Britain is the nation which can do us most harm among the nations of the world, whereas, if she is with us, we need not fear the whole world. It is important, therefore, for us to entertain with Great Britain relations of cordial friendship and nothing would help to tighten the ties of affection so much as to fight once more in the same cause. Not that I would purchase its friendship by taking part in its wars. But the war in which the present proposal could involve us, if war were to come of it, would not be England's war but ours. The object is to introduce and to establish the American system of keeping away from our continent all foreign Powers, of never allowing European Powers to meddle with our peoples' affairs. It is a question of vindicating our own principle not of departing from it, and if, in order to facilitate the realization of this scheme, we can create a division in the European camp and bring on our side its most powerful member, we must surely do so. But, I am entirely of Mr. Canning's opinion that this step will prevent war rather than provoke it. The moment Great Britain would be taken away from their side and thrown on this one, the whole of Europe combined would not dare to undertake such a war, for how indeed could these Powers attack either of these two enemies, without some superior fleet. And we must also not neglect this opportunity to enter our protest against the other violations of the rights of all nations perpetrated as a

political union between an American and an European State unnatural and inopportune."

The question was asked in England at the time whether the emancipation of the European colonies in America could ever become part of the foreign policy of the United States.

The Hispano-American War brought about a situation which did not seem entirely to agree with the Monroe Doctrine. Nevertheless President Roosevelt in a speech delivered in 1912 on the results of the Hispano-American War declared :

"The Monroe Doctrine is simply a statement of our very firm belief that the nations now existing on this continent must be left to work out their own destinies among themselves and that this continent is no longer to be regarded as the colonizing ground of any European Power. The one Power on this continent that can make the power effective is, of course, ourselves, for in the world as it is, a nation which advances a given doctrine, likely to interfere in any way with other nations, must possess the power to back it up, if it wishes the doctrine to be respected."

We now come to our own times, the eve of the opening of the Panama Canal.

On August 2, 1912, the United States Senate adopted the following resolution proposed by Senator Lodge by a majority of fifty-one votes to four.

"Resolved that when any harbor or other place in the American continent is so situated that the occupation thereof for naval or military purposes

might threaten the communications or the safety of the United States, the Government of the United States could not see without grave concern the possession of such harbor or other place by any corporation or association which has such a relation to another Government not American as to give that Government practical power of control for national purposes."

This action of the Senate grew out of the report that a stretch of territory bordering on Magdalena Bay, Mexico, might be acquired by the subjects of a foreign country and thus through control by their own national Government become the base of permanent naval or military occupation. In support of the resolution Senator Lodge said:

"The declaration rests on a much broader and older ground than the Monroe Doctrine. This resolution rests on the generally accepted principle that every nation has a right to protect its own safety. It is its duty and right to intervene." The Senator added that the opening of the Panama Canal gave to Magdalena Bay an importance that it had never before possessed, the Panama routes passing in front of it.

The political situation of the United States had undergone an important alteration by the annexation of the Philippine Islands which was already a departure from the principles enunciated by Washington. The opening of the Panama Canal was an event of still greater importance in the evolution of the United States' foreign policy.

This canal was bound to have upon the United States' policy an effect analogous to that of the opening of the Suez Canal upon British foreign policy. The utilisation by overseas trade of the Suez Canal resulted in organic changes in the construction of ships which no longer had to cross vast stretches of ocean without putting in at any port on the way. But especially the new route to India brought about an alteration in a commercial system which adapted itself to new markets. The closing of the Canal for a few days, nay, for a few hours, might entail loss not only material but also a dislocation of methods and schemes on which the regular exercise of Imperial control in India and elsewhere is built up. The result was the Egyptian question, the *main-mise* on Egypt and finally its annexation.

The Panama Canal cannot but produce a similar transformation of a commercial system hitherto based on totally different traffic conditions between the two shores of the Atlantic continent, and new interests which the closing of the canal would threaten with disaster. Now, between the United States territory and the Panama Canal there is a large State which for several years has been unable to restore itself to a condition of internal peace. One need only study the history of the Suez Canal to perceive what may be the possible development of American collateral policy interests in connection with the Panama Canal. It will necessarily affect the relations of the United States with their nearer neighbours.

The reader has seen in this brief analysis of the evolution of the United States' foreign policy a relationship between the notion of detachment from European affairs and that of *de facto* hegemony on the American continent. He has seen that the desire to keep the American continent free from the necessity of creating permanent armies and to avoid the European evil of militarism had given birth to both the Washington and Monroe declarations. He has seen principles, new circumstances, shake the foundations of these. The Great War was a new circumstance of still greater cogency.

On the one hand, the United States had to consider the possibility of a defeat of Great Britain which would not only have completely upset the political and economic condition of their overseas trade but would have threatened their hegemony on the American continent and their control of the Panama Canal. Successes on land of either of the European belligerents had, it is true, a sentimental, even warm sentimental interest for the United States but so long as the maritime supremacy of Great Britain remained intact, the American people confined their interest to helping the Allied Powers keep up a defensive war capable of preventing the Central Powers from extending their conquests. By their financial resources and their industries, the United States did this to the extent of their private means. When the maritime supremacy of Great Britain seemed threatened by submarine warfare, a large number of new potentialities had to be considered.

This was one of the situations President Wilson had now to examine. There was also a nearer contingency which he had to consider: the possible alliance between Germany and Mexico, an alliance which, as is now known from the correspondence which has been captured, had been contemplated and which might always materialise. I lay no stress on consequences too obvious to require explanations.

By the declaration of war, President Wilson at one and the same time made the United States' hegemony on the American continent effective, upheld in its entirety the Monroe Doctrine and insured the protection of the Panama Canal. As regards Mexico, the existence of an adequate American army reduced it, in fact, to a condition of practical vassalage which brought to an end a perilous state of things of which some short-sighted politicians did not realize the gravity.

The declaration of war was therefore but the last step in the policy of a century, and those who think that it throws over that policy and constitutes a "new departure" will do well to shake off that illusion. The only unaccountable and disconcerting "departure" from the safe and well-considered policy of the founders was the annexation of the Philippines, which we may some day learn was due more to sentimental reasons than to more trustworthy considerations based on permanent interests and the established principles of American general policy.

NOTES TO CHAPTER IV

NOTE ON PANAMA CANAL¹

One need only notice on the map the shape of the Gulf of Mexico and compare it with the shape of the Caribbean Sea in order to be convinced that, whereas the Gulf of Mexico as a consequence of American domination over Cuba has become a lake which the United States have the means of closing, the Caribbean Sea could only be closed by acquiring some form of domination over a number of islands at present belonging to different Powers. It follows that, as regards the sending of forces, in all possible hostile combinations, for the defence of the Panama Canal, it would be necessary either to go through Mexico or to cross the Gulf of Mexico. Moreover, in case of war, it would be impossible to contemplate an effective barrage of the Caribbean Sea in spite of the possession of the island of Porto Rico. There are, it is true, railways across Mexico but only some sections of railway systems in the other States of Central America. The problem of providing means of defence for the canal, in fact, has become by reason of events in Mexico more acute, but it is not confined to Mexico.

That the creation of this new waterway would bring about changes in the relations between Spanish America

¹ Translated by Mr. A. Wright, from Sir T. Barclay's "*Le Président Wilson et l'évolution de la politique étrangère des États-Unis.*" Armand Colin, Paris, 1918.

for that is the only way for them to make themselves invincible and unassailable.

"The South American family united in a supreme desire for freedom in the defence of a race shall not be vanquished by the Yankee's formidable squadrons nor by the dollars of their multi-millionaires; whereas if divided, it will drift further and further from the ideal of its destiny and the Northern octopus shall slowly and surely crush it in its frightful tentacles. It will thus work at the digging of its own grave.

"Let us say what we think. The Panama Canal will for a long time be the source of sensational rumours. The fortifications theme was scarcely exhausted before the problem of the acquisition of the Galapagos Islands arose; then came the attempt by President Arosemena to enter into *pourparlers* with Colombia, and on all sides one sees dangers, some real, some imaginary, as soon as the presence of the star-spangled flag is signalled in the Pacific.

"Time will confirm once more the radical transformation which the Monroe Doctrine has undergone and the naïveté of certain South American statesmen and of a part of the South American Press who remain undisturbed when conquerors are at the doors of Byzantium."

Similar alarm has been shown by M. D'Estournelles de Constant in his interesting work on "Les États Unis d'Amérique", Paris, 1913 (new edition, 1917). It seems however to me to overlook a situation which I have pointed out in the text.¹

M. D'Estournelles de Constant says: "In Panama, in the Philippines, the Americans could have restricted themselves to a useful and magnificent mission; they

¹ "Le Président Wilson et l'évolution de la politique étrangère des États-Unis." Armand Colin, Paris, 1918.

went beyond; in Panama they have assumed liabilities without limit and fraught with peril for every one; they have assumed the responsibility of a route where every accident of a purely administrative order will be fatally enlarged owing to their political domination and will assume a political character. What a blow to the civilization and to the higher interests of the United States! What bravado and senseless quest for impopularity! Can one imagine the ships of all countries which for forty years have been freely sailing through the Suez Canal, henceforward filing past the guns of the American forts! What a startling difference of treatment! What a shock to every one's mind! It is by pretensions of that kind, by blows of Might superseding Right, that Germany did so much harm to herself in universal opinion; and now we see the American democracy falling into this imperial mistake even before it has an army and the necessary maritime squadrons to support such an attitude.

"These precautions, alleged to have been taken in the interest of American commerce, will do it harm. The Panama Canal should be an improvement on the Suez Canal: it should have been not in the hands of one Power, that is to say in the hands of one Government and one day perhaps in the hands of a coterie, but rather under the safeguard of all.

"An unfortified Panama Canal would have been still more neutral, still less threatened, and hence, better defended by general interest than the Suez Canal.

"Let us suffer this belittling of a great scheme; let us submit to these fortifications more humiliating still for those who impose them than for those who accept them. But let us follow the consequences of this American mistake. Under the pretext of protecting a neutrality which had nothing to fear from anybody, the United

States are going to inflict upon themselves garrisons, squadrons which will call for other squadrons and so forth. That is not all. Provision had to be made for the bill to be paid; and, in order to find the enormous sums which all these precautions will cost the United States, they had to go further along the road of violation of every one's rights; under the pretext of giving preferential treatment to a few national navigation companies yet unborn, they had to get ready to extort from foreign ships differential taxes which in some cases will be prohibitive, and from which the United States alone will derive any profit; this is the boycotting of international commerce on its way through: taxes, guns, nothing will be wanting to greet it in this canal *soi-disant* universal" (p. 497).

As regards the relations between England and the United States in the western hemisphere and the Panama Canal, Mr. Coolidge (A. C. Coolidge, "*Les États-Unis Puissance Mondiale*", Paris, 1908, pp. 300 *et seq.*) points out that these relations are not confined solely to the questions concerning Canada; apart even from the Great Dominion, Great Britain occupies in the New World a position which the Americans constantly have to take into account. "In the coralliferous Bermuda Islands fortified and almost impregnable, she possesses an excellent base for operations whence a hostile fleet could threaten the whole American coast from Maine to Florida. More to the south the Bahama Islands group commands the entrance to the Florida Canal; Jamaica stands as a sentinel in front of any canal which might go through Nicaragua or Panama; the British possessions in Guyana and the Lesser Antilles command the exit from the Caribbean Sea. In short, all these posts make a formidable chain. The Bermuda Islands are isolated

and have given rise to no quarrel. The United States may be annoyed at their being in possession of the English but there is nothing to be done. They have rather turned their attention towards the Caribbean Sea and the neighbouring waters where during nearly the whole of the nineteenth century they have had keen rivalry with the English — a rivalry which has only just come to an end.

“When the Panama Canal is at last completed, New York as well as the ports of the Mexican Gulf will be much nearer the western shores of South America; they will also be able to communicate with Australia and the Far East in much more advantageous conditions than to-day. What will these advantages exactly be? It is difficult to say; distance does not prevent Bremen from competing with Marseilles in the same regions, but this is a factor nevertheless which must be reckoned for something. It is easier to see what the American fleet will gain: the canal will enable it to concentrate its forces rapidly in either of the great oceans, and as a neutral line of water communication, it would be invaluable if one was at war on both sides at the same time. Even now American supremacy is solidly established in the Mexican Gulf and the Caribbean Sea. It might take umbrage at the arrival of the Canadians in these waters, but they need not make it a serious case. If Great Britain again wished to become a rival of the United States in that part of the world, she no longer has the means. Although their present situation is satisfactory, certain signs warrant the belief that the United States will not be satisfied with it. Led by the impulse of natural forces and hereditary traditions rather than by deliberate purpose, they must, it seems, fortify their position in these waters.”

President Roosevelt, on his side, recalls that in the past most of the members of the different Congresses have been opposed always to the reconstruction of the fleet and to the fortification of the Panama Canal. "They thought they were acting well, but," he adds with his usual verve, "they shamefully betrayed the national duty, they showed themselves the most dangerous enemies of the Republic. If the American people wish to support such politicians, let them give up the canal, give it back to Panama, or present it to Japan, to Germany, to England or to any nation who is governed by men, not by eunuchs! Let them give up also the Monroe Doctrine and no longer pretend that they protect life and property in Mexico! In short, let us become a Western China, and in weakness and impotence wait for the day when our territory shall be split up between more energetic races! But if we intend to play our part as a great nation, to be ready to defend our own interests and to be useful to others, let us make up our minds what we ought to do and get ready to do it! South of the equator, on a line nearing on both sides the Panama Canal, we no longer need concern ourselves about the Monroe Doctrine. Brazil, Chile and the Argentine are capable of upholding this doctrine for the whole of South America, except in the extreme northern parts. Consider for instance the case of the Argentine. As in Switzerland, military service there is compulsory, which socially and industrially has been of much benefit. It has also given the State an army of almost half a million men; although the population is not one ninth that of the United States. The Argentine is much more ready to defend its territory in case of sudden attack by a powerful enemy. We should do well to join its school and to learn the lesson it gives us.

"Hence we need only feel anxiety as to the Monroe Doctrine when it concerns the approaches to the Panama Canal; that is to say the territories between our southern frontier and the equator. We need not worry as to this doctrine as regards Canada, for, last year, Canada showed itself infinitely stronger than us." (Theodore Roosevelt. "*Le Devoir de l'Amérique en Face de la Guerre*", pp. 193 *et seq.*) Paris, 1917.

NOTE ON THE MEXICAN POLICY

The Mexican question, in contradistinction from the Panama Canal question, is a question of foreign policy for the United States. In spite of the President's declarations as to the noninterventionist character of his Government, it involves problems of adjacency of exceptional gravity.

For those who may know nothing of the matter, a few observations on this subject may possibly be useful. They will form a complement to what I have already said on the Panama question.

The Mexican revolution was a constitutional and liberal reaction against the dictatorship of Porfirio Diaz, who had been in power from 1876 to 1911. Under his Government, which had been preserved by force and intrigue, the country as a whole had enjoyed considerable prosperity. Popular will, however, had been suppressed by the classic methods of military despotisms.

After thirty-five years of dictatorship, Diaz was overthrown by Francisco Madero, the leader of a secessionist group of the liberal and progressist parties who had him elected in the place of Diaz.

Huerta had been a general under the orders of Madero. After a ten-days' battle in the city of Mexico against

Madero's adversaries, he suddenly seized power and caused the arrest of Madero, who was killed in the National Palace.

Huerta then assumed office, which he retained from February, 1913, to July, 1914. Public rumour accused him of being favourable to foreign interests supported by a section of European diplomacy.

In the north, Huerta met with resistance on the part of Venustiano Carranza who had been a Senator and who at that moment was Governor of the state (province) of Coahuila. Carranza, after a confused struggle in which various interests endeavoured to amalgamate, became President. President Huerta then took refuge in the United States, where he died.

As in the case of Huerta and Madero, Carranza's general, Villa, took advantage of his chief's confidence to oppose him. Zapata, another general, also separated from him and these two leaders of bands, assisted by Felix Diaz, who had fought against Madero, are still chiefs of armed factions.

Carranza, who alone enjoys some civil authority as a parliamentarian and administrator among those who led the revolution, was recognized as soon as possible (October 19, 1915) by the Government of the United States. It is a *de facto* government, the legitimacy of which has not yet been ratified by an election, but as such it has been recognized by all or nearly all the governments of South America, by Japan and by all the great European Powers.

In the course of the struggle, numerous Americans were killed, wounded or ill-treated and material interests of American citizens suffered. Even the flag of the United States was insulted. Hot-headed patriots in the United States wished to embark on a war with Mexico,

to visit on the innocent the crimes of the guilty. The Government, having a greater responsibility than opposition leaders, was wise enough not to do anything which might have resulted in the creation of a coalition of the various Mexican parties for national defence, and have inevitably brought back a military dictatorship. President Wilson's electors were thankful to him for not having launched the country into an adventure the object of which would have been the support of a cause contrary to all the traditions of the great American republic and which could only have created grievances in a neighbouring State. (See T. Barclay's "*Le Président Wilson et l'évolution de la politique étrangère des États-Unis.*" Armand Colin, Paris, 1918.)

CHAPTER V

EQUALITY OF TRADE CONDITIONS

I AM not concerned with any meanings of a domestic character which may be hidden behind the third of President Wilson's theses. It was addressed to the world generally and the plain meaning of the verbal statement is what binds the responsible political chiefs who have accepted its terms as those to which the Allies are committed.

The third of the President's theses contains two propositions. The first is "the removal, so far as possible, of all economic barriers." The words "so far as possible" reduce it to a mere pious wish, an expression of the President's personal leaning to "free trade" and disapproval of monopolies whether deliberate or practical of all kinds, as he has, in fact, more or less explained.

The second part is affirmative, viz. : "the establishment of an equality of trade conditions." Free trade is equality of trade conditions, but equality of trade conditions is also consistent with a protective tariff, provided no preference under it is given to one importer as against another. It means *most-favoured-nation treatment* and as a definition of

that treatment the President's words ought to mean nothing else. In the view of every authority judicial or political, except the United States Supreme Court, it does mean nothing else.

To give effect to it in the Treaty of Peace "among all the nations consenting to peace", to use the President's phrasing, the nations "associating themselves for its maintenance" will have to agree to a "most-favoured-nation clause" without *arrière-pensée*, or a clause so precise that there will be no possibility of going behind it and alleging that such a clause "does not prevent special concessions."¹ The clause to carry out the President's proposal as endorsed by the Allies will have to state that it does prevent special concessions.

"Equality of trade conditions," as propounded by the President without any specific qualification would exclude "boycotting" as a sanction against any nation guilty of backsliding, and it is a barrier against the adoption of several of the resolutions of the Economic Conference of Allied Governments of June, 1916, especially of clause B II. These resolutions were adopted before the United States had become a belligerent and President Wilson is free to regard them as obsolete, if it so pleases him. The obnoxious clause reads as follows:

"Whereas the war has put an end to all treaties of commerce between the Allies and Enemy Powers, and it is of essential importance that during the period of economic reconstruction the liberty of none of the Allies should be hampered by any claim

¹ See Whitney Robertson, S. C., decisions.

put forward by Enemy Powers to most-favoured-nation treatment, the Allies agree that the benefit of this treatment will not be granted to those Powers during a number of years, to be fixed by mutual agreement among themselves.

"During this number of years the Allies undertake to assure each other, so far as possible, compensatory outlets for trade in case consequences detrimental to their commerce should result from the application of the undertaking referred to in the preceding clause."

The French Government apparently sees no antinomy between this strangely unpractical clause and President Wilson's third point, seeing that as recently as September, 1918, it "denounced" (*i.e.* gave notice of cancellation of) the Franco-Swiss treaty of commerce of October 20, 1906, with a semi-official explanation which says: "In June, 1916, the Economic Conference in Paris put on record the wish of the Entente Powers to refuse the enemy the benefits of the most-favoured-nation treatment for the years following the conclusion of peace. The Government had to be prepared for the economic war after the war of arms has ceased. Following the principle and to facilitate its application, the French Government in a circular of April, 1918, proposed to denounce all existing treaties of commerce containing the most-favoured-nation clause. Hence the denunciation of the Franco-Swiss treaty." This is out-Heroding Herod, for as the *Temps* (September 16, 1918) observes, the Economic Conference did not propose

to begin operations by penalising neutral countries. Merely denouncing the treaty, however irritating it may be to the Swiss, does not however necessarily mean that the denunciation will be acted upon and, as in the case of England's imports into France under a special most-favoured-nation *régime* which has existed since 1892, Switzerland may be granted most-favoured-nation treatment by act of Parliament without a treaty.

But the point remains that the French Government does not consider itself bound by President Wilson's third proposition, although it has joined in the chorus of acceptance of the whole of his fourteen and other propositions, with the single reservation dealt with in the analyses of point number 2.¹

I am not aware that the decisions of the Economic Conference were preceded by any inquiry into the needs or opinions of business men among any of the Allied nations. The signatories of the document are all politicians or diplomatists and it is still open to governments to ascertain what the English, French or Italian manufacturing interests think of the resolutions before giving the remotest effect to suggestions not only untested but in absolute contradiction to the American attitude, an attitude I believe to be in accordance with the feeling of the bulk of the business interests of the countries concerned.

In dealing with other questions of after-war trade the resolutions of the Economic Conference

¹ See p. 31.

are still more antagonistic to President Wilson's. If I understand the different utterances aright and read correctly the motives of the American people for being in the War at all, it is that they wish to put an end to the causes of war and not to create new ones or continue the struggle under the mantle of a factitious peace. The President expressed this view most emphatically in his speech launching the fourth Liberty Loan at the end of September last. The response to the Loan is the answer of America.

"There can be," he said, "no leagues or alliances or special covenants and understandings within the general and common family of the league of nations"; and more specifically, "there can be no special, selfish economic combinations within the league and no employment of any form of economic boycott or exclusion except as the power of economic penalty by exclusion from the markets of the world may be vested in the league of nations itself as a means of discipline and control."

"Economic rivalries and hostilities," says the President truly indeed, "have been the prolific source in the modern world of the plans and passions that produce war. It would be an insincere as well as an insecure peace that did not exclude them in definite and binding terms." And as if to emphasize this *coup de grace* he adds that the common purpose of enlightened mankind has taken the place of national purposes and the counsels of plain men those of statesmen who "must follow the clarified common thought or be broken."

NOTES TO CHAPTER V

NOTE ON "OPEN-DOOR" POLICY

The habitable parts of the world are a limited area, exclusion from any of which is a diminution of the available markets of the nations excluded. Every Power is, therefore, rightfully interested in the prevention of such exclusion.

The United States Government in 1899 called attention to the subject as regards China, without, be it said however, going into any question of principle.

In a communication to the Foreign Office, dated September 22, 1899, Mr. Choate reminded Lord Salisbury that the British Government, while conceding to Germany and Russia the possession of "spheres of influence or interest" in China, in which they were to enjoy special rights and privileges, particularly in respect of railroads and mining enterprises, had at the same time sought to maintain the "open-door" policy, that is, to secure to the trade and navigation of all nations equality of treatment within such "spheres." The maintenance of this policy, Mr. Choate said, was equally desired by the United States Government. Though the latter would not commit itself to the recognition of any exclusive rights of any Power within, or control over, any portion of the Chinese Empire under such agreements as had been made, it could not conceal its apprehension that difficulties might arise between the Treaty Powers,

imperilling the rights secured to the United States by its Treaties with China. His Government thought that danger of international irritation might be removed by declarations being made by each Power claiming a "sphere of interest" in China, in some form to this effect:

"1. That it will in no wise interfere with any Treaty port or any vested interest within any so-called 'sphere of interest' or leased territory it may have in China.

"2. That the Chinese Treaty Tariff for the time being shall apply to all merchandise landed or shipped to all such ports as are within such 'sphere of interest' (unless they be free ports), no matter to what nationality it may belong, and that duties so leviable shall be collected by the Chinese Government.

"3. That it will levy no higher harbour dues from another nationality, frequenting any port in such 'sphere', than shall be levied on vessels of its own nationality — and no higher railroad charges over lines built, controlled, or operated within its 'sphere' on merchandise, belonging to citizens or subjects of other nationalities, transported through such spheres, than shall be levied on similar merchandise belonging to its own nationals transported over equal distances."

There was strong reason, Mr. Choate continued, to believe that the Governments of Russia and Germany would coöperate in such an understanding. Under a recent Ukase the Emperor of Russia had declared the port of Talienwan open to the merchant ships of all nations during the whole term of the lease under which it was to be held by Russia, and Germany had declared Kiao-Chao a "free port."

On September 29, 1899, Lord Salisbury replied that the policy consistently advocated by Great Britain was one of securing equal opportunity for the subjects or

citizens of all nations in regard to commercial enterprise in China, and that from this policy H. M. Government had no intention or desire to depart.

On November 30, 1899, Lord Salisbury informed Mr. Choate that H. M. Government were prepared to make a declaration in the sense desired by the United States Government "in regard to the leased territory at Weihai-Wei and all territory in China which may hereafter be acquired by Great Britain by lease or otherwise, and all spheres of interest now held or which may hereafter be held by her in China, provided that a similar declaration be made by the other Powers concerned."

Before January 5, 1900, all the powers concerned had subscribed to the declaration in question, which thus became binding among them.

In further confirmation, and no doubt with a view to giving still greater precision to the above principles, the British and German Governments on October 16, 1900, signed the following agreement :

"Her Britannic Majesty's Government and the Imperial German Government, being desirous to maintain their interests in China and their rights under existing Treaties, have agreed to observe the following principles in regard to their mutual policy in China :

"1. It is a matter of joint and permanent international interest that the ports on the rivers and littoral of China should remain free and open to trade and to every other legitimate form of economic activity for the nationals of all countries without distinction ; and the two Governments agree on their part to uphold the same for all Chinese territory as far as they can exercise influence.

"2. Her Britannic Majesty's Government and the Imperial German Government will not, on their part, make use of the present complication to obtain for them-

selves any territorial advantages in Chinese dominions, and will direct their policy towards maintaining undiminished the territorial condition of the Chinese Empire.

"3. In case of another Power making use of the complications in China in order to obtain under any form whatever such territorial advantages, the two Contracting Parties reserve to themselves to come to a preliminary understanding as to the eventual steps to be taken for the protection of their own interests in China.

"4. The two Governments will communicate this agreement to the other Powers interested, and especially to Austria-Hungary, France, Italy, Japan, Russia, and the United States of America, and will invite them to accept the principles recorded in it."

This agreement was simultaneously communicated by the British and German Governments to the Powers mentioned in Clause 4. The principles "recorded in it" were duly accepted by them all.

The "open-door" question was brought up again in connection with Morocco. Under Article IV. of the joint declaration of April 8, 1904, signed on behalf of Great Britain and France, it was agreed that "the two Governments, being equally attached to the principle of commercial liberty both in Egypt and Morocco, declare that they will not in those countries countenance any inequality either in the imposition of customs duties or other taxes, or railway transport charges. . . . This mutual engagement shall be binding for a period of thirty years."

Negotiations between France and Germany, which arose out of a controversy in respect of the same subject matter, resulted in the signing, on September 28, 1905, of a joint note concerning the matter to be submitted to the Conference on Morocco affairs, which included the

“fixation of certain principles for the purpose of preserving economic freedom”, in other words, the “open door” generally without any restriction as to time.

At an earlier date, Article I. of the General Act of the Berlin Conference of 1885 on the *régime* to be applied in the Congo basin, declared, “The trade of all nations shall enjoy complete freedom.”

It is seen that the principle of the “open door” has already been consistently applied in connection with certain non-European areas. As these areas are practically the only areas which of late years have come within the scope of European regulation, the time seems to be approaching when the principle might be declared to be of general application.

From the point of view of diminishing the possible causes of conflict among nations, the adoption of the principle as an international contractual obligation would be of great utility. While putting an end to the injustice of exclusion, it would obviously reduce the danger of nations seeking colonial aggrandisement with a view to imposing exclusion, and thus one of the chief temptations to colonial adventure would be eliminated. (From Sir T. Barclay, “Problems of International Practice and Diplomacy.” London and Boston, 1907.)

EUROPEAN RESOURCES OF IRON ORE

Germany and Austria have large resources of good iron ore, but the rate of their production is not sufficient to supply the needs of the iron smelting works and Germany supplements her supplies from Sweden, France, Spain and Algeria.

Poland has resources of ore estimated at about 600,000 tons. Much of it goes to Silesia.

Russia is not very rich in iron ores. In the Ural Region there are 439 mines but no single deposit appears to be of any great magnitude. In Central Russia the resources are estimated at some 780,000,000 tons but many of the deposits are thin and cannot be profitably worked.

Sweden: The Lapland region, as far as explored, is estimated to contain 1,158,000,000 tons of good iron ore, Central and Southern Sweden about 134,000,000 tons of ore of different grades.

In 1894 the total French production of iron ore was 3,700,000 tons of which 3,000,000 was raised in Meurthe-et-Moselle, and the Briey field contributed only 9,000 tons of the whole. In 1913 the output had risen to 22,000,000 tons of which the Briey district contributed 15,000,000.

The resources are estimated by Nicou¹ as follows:

Nancy, 200,000,000 tons

Longwy, 275,000,000 tons

Briey, 2,000,000,000 tons

Crusnes, 500,000,000 tons

Down to 1914, 650,000,000 tons had been extracted from the Lorraine mines, or an amount equal to one eighth of the quantity remaining.

There are other sources in Normandy, Anjou and Brittany (see Nicou's report).

The Normandy deposits extend over the departments of Calvados, La Manche and l'Orne and are second in importance among the iron-producing districts of France.

Of the importing countries the returns of 1913 showed that the United Kingdom imported 8,000,000 tons of iron ore, Belgium 4,400,000 tons, France 1,400,000 tons, Austria 942,000 tons, the United States 2,600,000 tons and Germany 14,000,000 tons.

¹ *Journal of the Iron and Steel Institute*, 1914.

Of exporting countries France sent out 10,000,000 tons (plus Algeria 1,350,000), Spain 9,000,000, Sweden 6,400,000 tons.

NOTE ON THE STATE OF BRITISH TRADE IMMEDIATELY
BEFORE THE WAR

There is a widespread and rather mischievous impression, not only among certain ignorant German patriotic writers but also in France and America and even among some Englishmen, that England joined the Allies against Germany on the economic ground that her manufacturers were ousting us from our greatest markets, that if the War had not stopped her, the trade of the whole world would soon have been in her hands and we should have had to take a second and diminishing place in the markets of the world.

The facts of British trade do not in the least bear out this apprehension.

Taking the totals of British trade during the ten years from 1904 to 1913, the exports from the United Kingdom to foreign countries rose from £188,000,000 to £330,000,000 and to our own colonies and protectorates from £112,000,000 to £195,000,000 through a steady graduation culminating in these figures. The figures of the three years preceding the War, so far from showing any relaxation of the progression, show the contrary, as the following official table of exports (Consignments of the Produce and Manufactures of the United Kingdom to Foreign Countries), demonstrates:

	To Foreign Countries	To British Possessions	To Protectorates
1911	£295,000,000	£159,000,000	£454,000,000
1912	£310,000,000	£177,000,000	£487,000,000
1913	£329,000,000	£195,000,000	£525,000,000

In the same period our exports to Germany of produce and manufactures of the United Kingdom increased from £25,000,000 to £40,000,000. Of these £40,000,000 the analysis shows that £27,000,000 consisted of articles wholly or mainly manufactured in the United Kingdom.

That our imports from Germany increased in a larger proportion does not prove that we were losing, seeing that our total export trade was increasing, as we have seen, all the while enormously and our trade had never during the ten years immediately preceding the War been so prosperous as in 1913.

**NOTE ON EFFECT OF "MOST-FAVoured-NATION"
CLAUSE IN COMMERCIAL TREATIES ¹**

The most-favoured-nation clause is one which it has become customary to insert in treaties of commerce, providing that if any reductions of tariff or other advantages are granted by either co-contracting State to any third State, the other shall have the benefit of them. In Europe this clause has been uniformly treated as applying to all reductions of tariff without distinction. The United States interpretation, on the other hand, distinguishes between reductions of a general character and reductions made specifically in return for reductions by some other State. The latter do not come within the operation of the clause, and a co-contracting State is only entitled to obtain extension of them to itself by granting similar concessions. In other words, special concessions to any co-contracting State are only allowed gratuitously to a third co-contracting State, when nothing is given for them, the clause not covering advantages granted in return for advantages.

¹ From Sir Thomas Barclay's "Problems of International Practice and Diplomacy." London and Boston, 1907.

In a despatch of July 17, 1886, to the American Minister in China, Mr. Bayard explained the American view in the following terms: "In its commercial aspects the expediency of an unqualified favoured-nation clause is questionable. The tendency is towards its formal qualification, by recognising in terms what most nations hold in fact and in practice, whether the condition be expressed in the clause or not, that propinquity and neighbourliness may create special and peculiar terms of intercourse not equally open to all the world; or by providing that the most-favoured treatment, when based on special or reciprocal concessions, is only to be extended to other Powers on like conditions."

This is still the United States view, as is set out in a luminous article in the November (1905) number of the *North American Review*, on "The Alternative of Reciprocity Treaties, or a Double Tariff", by Mr. John Osborne, chief of the Bureau of Trade Relations, State Department, and late Secretary of the Reciprocity Commission, a gentleman eminently competent to describe the contemporary American standpoint. Mr. Osborne maintains that "it is evident that the gratuitous extension to third Powers of commercial advantages exchanged in reciprocity between two countries is absolutely inconsistent with the true principles of reciprocity as understood in the United States; it would not only seriously impair and even tend to destroy the value of the original grant, but it would also involve duty reductions upon the entirety, or, at least, the bulk of importations from the world, of the articles of merchandise affected, thus constituting a serious sacrifice in national revenues."

This is an argument of policy, and not one, properly speaking, of interpretation or construction. No strictly judicial argument can be urged in support of the Ameri-

can view. Whether a reduction "bought", as it were, by a counter-reduction is affected by a "most-favoured-nation" clause depends, from a judicial point of view, solely on the wording of the clause.

There seemed to be a possibility that this would become the judicial construction in America under a decision of the United States Supreme Court (*Bartram v. Robertson*), but the question a few months later came up again in *Whitney v. Robertson* (Supreme Court of the United States, 1887, 124 United States, 190), when the official view, on the contrary, was strongly endorsed. The plaintiffs in the action were merchants doing business in the city of New York. They imported a large quantity of sugars, produce of the island of San Domingo, similar in kind to sugars produced in the Hawaiian Islands, which were admitted free of duty under a treaty with the government of those islands. The treaty provided for the importation into the United States, free of duty, of various articles, "the produce and manufacture of those islands, in consideration, among other things, of like exemption from duty, on the importation into that country, of sundry specified articles which are the produce and manufacture of the United States." The first two articles of the treaty, which recited the reciprocal engagements of the two countries, declared that they were made in consideration "of the rights and privileges" and "as an equivalent therefor", which the one conceded to the other. The plaintiffs relied for a like exemption of the sugars imported by them from San Domingo upon Article IX. of the treaty with the Dominican Republic, which is as follows: "*No higher or other duty shall be imposed in the importation into the United States of any article of growth, produce, or manufacture of the Dominican Republic, or of her fisheries; and no higher*

or other duty shall be imposed on the importation into the Dominican Republic of any article the growth, produce, or manufacture of the United States or their fisheries, *than are or shall be payable on the like articles, the growth, produce, or manufacture of any other foreign country, or its fisheries.*" In *Bartram v. Robertson*, the Supreme Court had held that brown and unrefined sugars, the produce and manufacture of the island of St. Croix, a Danish possession, were not exempt from duty by force of the treaty with Denmark, though similar goods from the Hawaiian Islands were thus exempt. The first article of the treaty with Denmark provided that the contracting parties should not grant "any particular favour" to other nations, in respect to commerce and navigation, which should not immediately become common to the other party, who should *enjoy the same freely if the concession were freely made, and upon allowing the same compensation if the concession were conditional.* Article IV. provided that no *higher or other duties* should be imposed by either party on the importation of any article of its produce or manufacture, into the country of the other party, *than were payable on like articles, being the produce or manufacture of any other foreign country.* The Supreme Court had held that —

"Those stipulations, even if conceded to be self-executing by the way of a proviso or exception to the general law imposing the duties, do not cover concessions like those made to the Hawaiian Islands for valuable consideration. They were pledges of the two contracting parties, the United States and the King of Denmark, to each other, that in the imposition of duties on goods imported into one of the countries which were the produce or manufacture of the other, there should be no discrimination against them in favour of goods of like character imported

from any other country. They imposed an obligation upon both countries to avoid hostile legislation in that respect. But they were not intended to interfere with special arrangements with other countries founded upon a concession of special privileges."

In *Whitney v. Robertson*, counsel for the plaintiffs contended that the omission from the treaty with the Republic of San Domingo of the Danish-American provision as to free concessions, and concessions upon compensation, precluded any concession in respect of commerce and navigation by the U. S. Government to another country without that concession being at once extended to San Domingo. The Supreme Court, however, held that the absence of this provision did not change the obligations of the United States; that Article IX. of the treaty with San Domingo was "substantially like Article IV. in the treaty with the King of Denmark." It was a pledge of the contracting parties that there should be no discriminating legislation against the importation of articles which were the growth, produce, or manufacture of their respective countries, in favour of articles of like character imported from any other country, but "it had no greater extent." "It was never designed to prevent special concessions, upon sufficient considerations, touching the importation of specific articles into the country of the other." "*It would require the clearest language to justify a conclusion that the U. S. Government intended to preclude itself from such engagements with other countries, which might in the future be of the highest importance to its interests.*"

With all respect to the great authority of the decisions of the United States Supreme Court, the language of the Treaty in question seems of the clearest, and diametrically opposed to its ruling.

The treaty regulating the trade relations between Great Britain and the United States (July 3, 1815), continued in force and reported in an official return to the British Parliament, Commercial No. 4, 1907, to be in operation between the two countries down to January 1, 1907, is practically in the same terms, providing that —

“No higher or other duties shall be imposed on the importation into the territories of His Britannic Majesty in Europe of any articles of growth, produce, or manufacture of the United States, and *no higher or other duties shall be imposed* in the importation into the United States of any articles the growth, produce, or manufacture of His Britannic Majesty’s territories in Europe, *than are or shall be payable* on the like articles, being the growth, produce, or manufacture of any foreign country” (Art. II.).

The form adopted in the treaty between Great Britain and Uruguay of July 15, 1899, leaves nothing to construction; it specifically restricts the application of the clause:

“It was also agreed that the stipulations contained in the Treaty which is to be renewed *do not include cases in which the Government of the Oriental Republic of Uruguay may accord special favours, exemptions, and privileges to the citizens or products of the United States of Brazil, of the Argentine Republic, or of Paraguay in matters of commerce.* Such favours cannot be claimed on behalf of Great Britain on the ground of most-favoured-nation rights as long as they are not conceded to other States. It is, nevertheless, understood that the said special favours, exemptions, and privileges shall not be capable of application to products similar to those of Great Britain, nor be extended to navigation.”

The same may be said of the Franco-German Treaty

of Frankfort (May 10, 1871). Article II. of that treaty provided as follows:

"The treaties of commerce with the different States of Germany having been annulled by war, the French and German Governments will base their commercial relations upon the system of reciprocal treatment on the footing of the most favoured nation.

"This rule shall not apply, however, to the *favours* which either of the Contracting Parties, by commercial Treaties, has granted or shall grant to States other than the following:—England, Belgium, Holland, Switzerland, Austria, and Russia. . . .

"Nevertheless, the French Government reserves to itself the faculty to establish on German vessels and their cargoes, tonnage and flag duties, under reserve that these duties shall not be higher than those which are imposed upon vessels and cargoes of the above mentioned nations."

The German-Austro-Hungarian Treaty of Commerce of December 6, 1891, amended and completed by that of January 25, 1905, provides that *no more favourable conditions in respect of "import, export, or transit" duties shall be granted by either Contracting Party to a third Power than are accorded to the other Party*, and that *any concessions of this kind made to a third Power shall at once be applied to the other* (Art. II.), any dispute relating to this provision to be referred to arbitration (Art. XXIII.). This seems equally clear in the contrary sense.

In Europe the American view has found a supporter (*semble*) in Professor F. de Martens, who considers that a distinction must be made between a case where a commercial advantage is granted purely and simply, and a case where there is simply an exchange of *bons procédés* or a *dédommagement*. "In the former case alone

have other States a right to claim the same advantage. To grant it in the second would be contrary to the principle of the reciprocity of commercial obligations."

The same opinion was also arrived at much earlier by a distinguished French writer, M. Hautefeuille, who, in answer to the question of whether the condition of being treated as the most favoured nation only carried the advantages existing at the time of the signature of the treaty, or comprised those which should be subsequently conceded to another State, answered that the clause must be considered as implying everything that existed at the moment when signed, but that it could not be considered to extend to anything later in date.¹

It is evident that it will be necessary in future treaties of commerce to be careful to provide against the possibility

¹ The forms of most-favoured-nation clauses vary considerably. That of the Treaty of Commerce and Navigation between Great Britain and France of February 23, 1882, runs :

"Each of the High Contracting Parties engages to give the other immediately and unconditionally the benefit of every favour, immunity, or privilege in matters of commerce or industry, which *may have been or may be conceded* by one of the High Contracting Powers to any third nation whatsoever, whether within or beyond Europe."

The British Treaty of Commerce with Honduras of January 21, 1887, provides :

"The High Contracting Parties agree, that in all matters relating to commerce and navigation, any privilege, favour, or immunity whatever which either contracting party *has actually granted or may hereafter grant* to the subjects or citizens of any other State shall be extended immediately and *unconditionally* to the subjects or citizens of the other contracting party; it being their intention that the trade and navigation of each country shall be placed in all respects by the other on the footing of the most favoured nation" (Article I.).

The Anglo-Rumanian Treaty of August 13, 1892 :

"The subjects, vessels, and goods, produce of the soil and industry of each of the two High Contracting Parties shall enjoy in the dominions of the other *all* privileges, immunities, or advantages *granted to the most favoured nation*" (Article I.)

of a construction which might frustrate the very objects for which most-favoured-nation clauses are resorted to, namely, to prevent any third Power from enjoying *special advantages*. Meanwhile the interest of stable international relations requires that the sense of the existing terminology of the clause should be defined.¹

NOTE ON RUSSIA AND POLAND

President Wilson demands the evacuation by Germany of all Russian territory. The rest of his sixth proposition is in the nature of an appeal to the Allies to give Russia a chance of righting herself.

The only question I need deal with is that of evacuation.

It is obvious that the President to-day would not take the same view as nearly a year ago, when there was a prospect of a properly elected Republican government being in a position to take over the territory which had been wrested from Russia. The President's views may also have undergone change as regards the right of Finland, the Baltic provinces and possibly the Ukraine themselves to determine what shall be their form of government and by what external allegiance, if any, they may be willing to curtail their autonomy. Evacua-

¹ *Droit International* (1886), ii., p. 322. "At the present day, when national interests are so entangled and complex," says M. Lehr, "it is always a serious matter to bind oneself in advance by a clause which is vague and general, and the eventual bearing of which cannot be estimated. There have been several instances in the course of the last few years in which a Power in the negotiation of a treaty has been in the necessity of refraining from granting concessions, because being extended by virtue of the clause, without any compensation whatever to a whole series of other countries, they would have been disastrous to the national industry." See Ernest Lehr, *Revue de Droit International*, 1893, p. 315.

tion which might only mean the imposition of a worse provisional régime than at present can hardly be one of the President's present conditions. We may rely, I think, on his general principles and analogies as regards the settlement of all matters relating to the ex-provinces of Russia.

As regards Poland there is nothing more tragic than the history of the Poles, one of the most gifted races of Europe and the most unhappy, victims of rival Powers which have never left them alone for a hundred and fifty years.

In 1772 at the time of the first partition, Poland consisted of the Kingdom of Poland properly speaking and the Duchy of Lithuania. The Kingdom included in the north Posnania or Great Poland, Little Poland with Warsaw and Cracow, and Royal Prussia with Danzig; in the south Red Russia or Galicia and in the southeast Little Russia. The first partition gave Galicia to Austria, Royal Prussia, with the exception of the cities of Danzig and Thorn, to Prussia, and a part of Lithuania to Russia. On the second partition in 1793 Prussia got Great Poland with Danzig and Thorn, and Russia the half of Lithuania. The third partition in 1795 gave the rest of Lithuania to Russia.

Napoleon was the next manipulator of the unhappy country. The treaty of Tilsit (1807) created the Duchy of Warsaw and made Danzig a free city. In 1809 Galicia and the Duchy of Warsaw were united. Lastly came the Congress of Vienna which more or less confirmed the pre-Napoleonic conditions but gave Danzig to Prussia. The three Powers agreed to grant constitutions suitable to the three Polish provinces. Austria alone kept her word.

It is calculated that the present population of Russian

Poland is 9,400,000, of Austrian Poland (Galicia), 4,500,000 and of Prussian Poland (in Posnania, Upper Silesia and scattered through East Prussia generally), 3,500,000. Among these are perhaps two or three millions of Jews.

With Poland President Wilson deals in a special proposition (Number 13). Poland, he says, (a) should be an independent State politically and economically, (b) should include territories inhabited by indisputably Polish populations and (c) should be assured "free and secure access to the sea."

The second of President Wilson's Fourth of July propositions lays down that matters whether of sovereignty or of political or economic relationship are subject to the principle of acceptance by those immediately concerned.

Then, the first condition to be imposed in connection with Poland is that the Poles alone shall decide as to their own destiny within the area of what was formerly Russian Poland.

As regards Prussian Poland the application of the same principle is less simple. It has not in fact been detached from Prussia by conquest or revolt. Nor have we conclusive evidence that there is any desire on the part of the Prussian Poles to be detached from Germany as a whole. I say "as a whole", because there is an obvious difference between forming part of a backward political entity like Prussia and having autonomy within a progressive empire. Nor do I perceive any practical need of ascertaining the feelings in regard to separation of people who do not seem to have hitherto agitated for more than a reasonable recognition of the right to use their own language and be employed in the administration of their own districts. On the other hand Prussian Poland has furnished to Prussia as Ireland has

furnished to England, in spite of a widespread spirit of disaffection, an exceptionally large proportion of political and diplomatic genius.

The same may be said of the gifted race in reference to Austrian Poland where, moreover, the Poles enjoy constitutional freedom, have their own university and are not known to have been desirous in any appreciable degree of severance from the Austro-Hungarian Empire.

President Wilson demands that Poland shall be an independent State economically as well as politically. When we enter the domain of economics we are no longer in that of ideals and idealists but in that of the interests of industry and commercial prosperity. In these matters to be fenced in by neighbouring countries, by customs barriers, protective systems and the treacherous devices agricultural interests are in the habit of concocting to keep rivals at bay, may have material disadvantages. On the other hand, to have free access to neighbouring markets and the protection of a powerful confederation in those beyond seas may weigh considerably in the balance of commercial and industrial interests against political ideals.

To meet the difficulty he must have foreseen in this respect, perhaps to evade it, the President demands "free and secure access to the sea."

Between Poland and the part of Prussia inhabited by Poles and the sea there is a wide band of territory which is German. Danzig, in the time of Poland's political glory, it has been seen, was part of Poland. It was at a time, however, when racial and linguistic questions played no part in the destinies of nations and populations were handed from State to State as if sovereignty and ownership were synonymous. Danzig, like Königsberg,

has always in modern times been a German city and its *Hinterland* and all the *Hinterland* of the coast to a long way inland is Germanic not Polish. I do not for a moment suppose that the President proposes to detach either Danzig or Königsberg from Germany. If so, then the only method of obtaining access to the sea would be by obtaining the use of a free harbour or dock such as Germans had arranged at the outbreak of the war to begin constructing at Rotterdam, a dock more or less on the lines of that which Germany possesses in the free City of Hamburg. This is not "free and secure" access in the full sense of the words, but it might be a workable independence. The same principle of free docks might also be applied in a number of other cases similar to that of landlocked Poland, such as that of landlocked Switzerland which may some day obtain from the French Government the use of such an independent dock at Marseilles. The same principle might be applied in still other familiar cases. Baron Aehrenthal, the then Austro-Hungarian foreign minister, authorized me in 1908 to propose it as a solution to Mr. Milovanovitch, the Serbian foreign minister, who replied that Serbia would have first to build a railway and she had neither money to build one nor enough exportable goods to bear the expense of its upkeep if it were built.

The principle, however, having once been admitted into the commercial polity of modern peoples, it may become, as a compromise, an additional method of meeting certain international difficulties.

NOTE ON RUMANIA, SERBIA AND MONTENEGRO

President Wilson classes in his eleventh proposition Rumania, Serbia and Montenegro together, but their

position in the Balkans and in their relations to the present War are not the same.

Serbia is the victim of an aggression. Rumania entered the War for purposes set out in her official records, which were still more deliberately than those of Italy purposes of conquest.

Montenegro, an "outpost of Russian mischief in the Balkans" as it has been called, seems to have no particular desire, according to competent opinion, to be detached from Serbia to which it belongs geographically, ethnographically, historically, linguistically and especially sympathetically.

The three States in question must necessarily be dealt with separately and, to follow out an examination of their respective position in logical order, let us begin with Montenegro which belongs in every respect to the Serbian sphere, so much so that not very long ago it was alleged that an intrigue was pending to place the Montenegrin sovereign on the throne of Serbia and thus unite the two countries after the fashion of Scotland and England of old!

The size of a State is no criterion of the magnitude of its sense of political responsibility. It may be more powerful in proportion to its political inferiority. This has been the case with Russia. Or from its very minuteness it may be a danger to its neighbours as a result of its geographical inaccessibility and political irresponsibility. This has been the case with Montenegro.

The question of whether Montenegro would be able to meet the obligations of independence without the assistance of Russia is a fair subject of inquiry.

On the other hand, the grant of representative government in the place of the present existing absolute mon-

archy, as part of the modern system with which President Wilson is seeking to endow Europe, is a democratic advantage which the people of Montenegro might not have the full benefit of, without the economic expansion which would be obtained by broadening its area of unfettered markets.

The Montenegrins have never had any experience of self-government and under the guidance of their fellow-countrymen of Serbia they might be a source of strength to that country and contribute a share in some respects not unlike that Scotland has contributed to England, by their rough mountainous country and more adventurous nature, to the common benefit of two countries of the same race and language at present merely separated by an artificial political boundary.

Serbia is a country of great promise. It has an able-bodied, healthy population, mineral resources, a fertile soil and all the elements that in coöperation bring prosperity and social betterment to a people, but one: She is hemmed in by rivals who have a surplus of the same agricultural produce to dispose of as herself — pigs, cereals, poultry, eggs, etc., which on one pretext or another they do their best to exclude from their own area as well as from the outer world. Facilities for transport which the Hungarian Government, owner of the Hungarian railways, might have granted were never afforded and, on the contrary, as regards the Serbian pigs, their exclusion, from time to time, was decreed on the ground of their being tainted with trichinosis, an allegation the truth of which was denied absolutely by the Serbs. An outlet southward or eastward if it did not meet with similar opposition from rival interests was checked by transport difficulties of an equally deterrent character.

The obvious remedy for this state of things was access to the sea, and such access could only be obtained by expansion westward to the Adriatic or southward to Salonica or such arrangements by treaty as would secure outlets not dependent on intervening foreign authorities.

Men like Baron Aehrenthal, who sought to conciliate rather than, like certain Magyar patriots, to exasperate her, saw the danger which might some day follow from this "bottling up" of legitimate Serbian economic aspirations. In 1908 he authorized me, when on a visit to Belgrade, to suggest to the Serbian Foreign Minister, Mr. Milovanovitch, whom I had met the previous year at the Hague and with whom I was on terms of friendship, that a leasing arrangement might be made for the construction of a Serbian railway to the Adriatic. Mr. Milovanovitch, who was one of the ablest of then living Balkan statesmen, told me he wished people would let Serbia alone, let her work at her destiny by herself and only interfere when asked. She had neither the money to build nor the produce to feed a railway of her own to the sea. This, however, did not prevent the continuance of international intrigue at Belgrade behind the back of Mr. Milovanovitch. Nor did it prevent the encouragement by Russian emissaries, protected by the Russian legation, of violent Serbian patriots, and European opinion became a great deal more excited over the Austro-Hungarian decree of annexation of Bosnia-Herzegovina than the Serbs themselves in whose interest the agitation was or was supposed to have been fomented.

One of the curses of Serbia throughout her history has been that her capital is not only on her frontier, but is on a navigable river. Of all conceivable frontiers only a busier thoroughfare than a navigable river can be a worse one, for the obvious reason that unless it is

closed to navigation a navigable river is a connecting seam, a bond, a junction, and the interest of the inhabitants of its banks is the removal not the creation of any restraints to trade and intercourse. There are, no doubt, political fanatics who pursue ideals detached from the material interests of peoples but history has no instances of a majority of any community consciously sacrificing their obvious interest to the altruistic ambitions of ideologues. The anomaly is accentuated by the fact that Belgrade, capital of Serbia, is connected by a bridge with the Hungarian town of Semlin. Revolutionary intrigue in both has always been fostered by this facility of escape from either, a circumstance which has begotten much of the ill-feeling which for a generation has vitiated the relations between the neighbouring governments. The Serbian Administration, whenever difficulty arose, emigrated to Nish, the ancient Serbian capital, as it did on July 27, 1914, on handing even an acquiescent reply to the Austro-Hungarian Government.

All observers of international affairs are familiar with the battle instinct of piracy and contraband called "*l'esprit de frontière*." In the course of time it seems to evolve into a blind hatred that makes no distinctions and admits no palliatives. The Belgrade press has always reflected this spirit and Serbia has been martyred most unjustly for excess of word and act due merely to this "*esprit de frontière*." Whatever arrangements of the new frontiers of Serbia are made this consideration in the interests of permanent peace should not be lost sight of.

Rumania, like Serbia, has a homogeneous population. She differs from Serbia, however, in not belonging to any of the Slavonic groups. The Rumanians speak a Latin

tongue and have preserved a good deal of the pride and reserve of the Roman conquerors from whom they claim descent.

Rumania had grievances against both Slav and Magyar. The Russian Government, to repay her for the assistance she rendered in the Turco-Russian War of 1877 and her brilliant and historic capture of Plevna, took fertile Bessarabia from her and gave her the Dobrudja swamp in its place, a wrong which never ceased to rankle in the Rumanian bosom till Bessarabia was recently restored to her. Against the Magyar the grievance is that a large Rumanian though somewhat mixed population lies across the frontier in Transylvania. Southward, too, in Macedonia, Rumanians have settled, for like the Slavs, they move and migrate to and fro in communities. It is estimated that as many as 4,000,000 of Rumanians are under Hungarian rule, that there are 2,000,000 in Bessarabia who from 1878 were under Russian rule, and that some 500,000 are scattered throughout Macedonia, while Rumania as a State has a population of only 7,500,000.

The difficulty throughout Hungary is that the population is not homogeneous; within thirty miles of Budapest there are Slovak, Rumanian, and German settlements where not a word of Magyar, the official language, is spoken. The Rumanian settlements grow thicker in population the nearer they are to the frontier till they form the majority in eastern Transylvania.

To bring all outer Rumanians within the fold could only be effected by deliberate exchanges of population and resistance to the wandering instincts inherited by these communities of Eastern Europe from more or less nomad ancestors.

This does not, however, apply to a rectification of

frontier in eastern Transylvania where the population is practically all Rumanian and which is so distinct from Magyar and Slav alike that there is no reason linguistic, ethnographic or sociological against detaching it from a country to which it owes not even the indulgence of being governed in a language it understands.

To Anglo-Saxons questions of Eastern Europe, especially those connected with the communal instincts of races so different, seem, more or less, involved in mystery, and in fact the more they are approached and understood, the greater seem to grow the difficulties of solution and the remoter the hopes of securing any permanent peace amid the flux and reflux of the instable racial elements composing the populations and political entities of Austria-Hungary and the Balkans.

TREATY AND MILITARY CONVENTION BETWEEN
RUMANIA AND THE ENTENTE POWERS¹

Treaty

Article 1. France, Great Britain, Italy and Russia guarantee the territorial integrity of the Kingdom of Rumania within the whole extent of its present frontiers.

Article 2. Rumania undertakes to declare war upon and to attack Austria-Hungary in the conditions stipulated in the military convention; Rumania also undertakes to break off, as and from the declaration of war, all economic and commercial intercourse with the enemies of the Allied Powers.

Article 3. France, Great Britain, Italy and Russia recognize Rumania's right to annex the territories of the Austro-Hungarian monarchy enumerated in Article 4.

¹ Translated for the author by Mr. A. Wright.

Article 4. The boundaries of the territories mentioned in the foregoing article are as follows:

The boundary line shall start upon the Pruth at a point of the present frontier between Russia and Rumania near Novoselitza and will go up this river to the Galician frontier at the confluence of the Pruth and the Ceremos. Then it will follow the frontier of Galicia and Bukovina and that of Galicia and Hungary to the Stog point (Hill 1655). Thence it will follow the line of separation of the waters of the Tisza and of the Tizo in order to reach the Tisza at the village of Trebuza above the point of confluence with the Tizo. From this point, it will descend the thalweg of the Tisza to a point four kilometres below its confluence with the Szamos, the village of Vasares-Namény to be included in Rumania. It will then proceed in a south-southwesterly direction up to a point six kilometres east of the town of Debreczen. From that point it will continue to the Crisch at a point three kilometres below the junction of its two affluents (the White Crisch and the Rapid Crisch). It will then join the Tisza on a level with the Algye village, north of Sezgedin, passing west of the villages of Croshaza and Bekessamson, describing a small curve three kilometres east of the latter village. From Algye, the line will descend the thalweg of the Tisza to its confluence with the Danube and lastly will follow the thalweg of the Danube to the present frontier of Rumania.

Rumania undertakes not to erect any fortifications in front of Belgrade within a zone to be subsequently settled and to keep within the said zone only such forces as may be necessary for police services. The royal Rumania Government undertakes to indemnify Serbian subjects of the Banat region who, abandoning their property, would wish to emigrate within two years of the conclusion of peace.

Article 5. Rumania on the one part, and France, Great Britain, Italy and Russia on the other undertake not to conclude a separate peace or the general peace except jointly and simultaneously.

France, Great Britain, Italy and Russia also undertake that, in the Peace Treaty, the territories stated in Article 4 shall be annexed to the Rumanian Crown.

Article 6. Rumania shall enjoy the same rights as the Allies in all that concerns the peace preliminaries and negotiations, and in the discussion of the questions which shall be submitted for decision to the Peace Conference.

Article 7. The Contracting Powers undertake to keep the present convention secret until the conclusion of the general peace.

Made in five parts at Bucharest, August 4/17, 1916.

Military Convention

Article 1. In pursuance of the Treaty of Alliance entered into on August 4/17, 1916, between France, Great Britain, Italy, Russia and Rumania, Rumania mobilising all her land and naval forces, undertakes to attack Austria-Hungary not later than August 15/28, 1916 (eight days after the Salonica offensive). The offensive operations of the Rumanian army shall begin on the same day as the declaration of war.

Article 2. As and from the signature of the present convention and during the mobilisation and concentration of the Rumanian army, the Russian army undertakes to operate in a specially energetic manner on all the Austrian front with the object of insuring the carrying out of the Rumanian operations above mentioned. Such action shall be especially offensive and strenuous in Bukovina where the Russian troops must at least keep their positions and their present effectives.

As and from August 12/25, 1916, the Russian fleet must insure the safety of the port of Constantza, prevent any landing by enemy troops upon the Rumanian coast and any incursion in the Danube, above the mouths of that river.

Rumania, on the other hand will recognise the right of the Russian Black Sea Fleet to use the port of Constantza and to take such steps as may be necessary against the enemy submarine fleet.

The Russian Fleet units which shall use the Danube whether to protect its shores or to lend assistance to the Rumanian land and sea forces shall be under the orders of the Commander-in-Chief of the Rumanian armies and will coöperate upon the river with the Rumanian monitor squadron. The details of such coöperation will be settled in accordance with the articles of the present convention.

Article 3. Russia undertakes that, at the time of the mobilisation of the Rumanian army, she will send into the Dobrudja, two infantry and one cavalry division in order to coöperate with the Rumanian army against the Bulgarian army.

The Allies undertake to start a determined offensive by the Salonica armies, at least eight days before Rumania's entry into the war, in order to facilitate the mobilisation and concentration of all the Rumanian military forces. This offensive shall start on August 7/20, 1916.

If, in the course of military operations, the Allied Powers, after agreement between the respective staffs, were to increase their military contingent coöperating with the Rumanian army, such increase of forces shall not modify in any way the stipulations of the agreements entered into.

Article 4. France, Great Britain, Italy and Russia

undertake to supply Rumania with munitions and war material which shall be carried in Rumanian or Allied ships and conveyed through Russia.

Such deliveries and conveyance shall be carried out in such a way as to insure the arrival into Rumania in as continuous a manner as possible of a minimum of three hundred tons per day, calculated upon one month's supply.

In the event of the Allies obtaining new means of access facilitating the transport of munitions, Rumania may have the benefit thereof.

Article 5. The Allies also undertake as far as possible to supply Rumania with horses, rubber, medicines, articles of food and equipment which she may ask according to quantities and categories which will be mutually agreed.

Article 6. The Allies shall place at Rumania's disposal the technical staff necessary for the manufacture within the country of war munitions and material.

Article 7. Immediately upon the signing of the present convention, the staffs of the Russo-Rumanian armies and the staff of the Salonica armies shall in concert agree upon the modalities of their coöperation.

Any agreement during the military operations of the Russo-Rumanian armies or any change, interpretation (*éclaircissement*) or supplement with a view to a permanent liaison, shall be settled at the respective Headquarters as stated hereunder.

Article 8. The coöperation of the Allied armies does not imply any subordination of one of the contracting parties to the other; it only operates as the free acceptance of the provisions or modifications due to the general situation, to the requirements of the object in view and to camaraderie in arms.

Article 9. In principle, the royal Rumanian troops

and the Russian Imperial troops will preserve their own command, their distinct zone of operations and complete independence in the conduct of operations. The line of demarcation between the two armies will run from Dorna-Vatra by the Bistritza and the valleys of the Chaio and Samesch rivers to Debreczen. The chief object of the Rumanian operations, as far as the military situation south of the Danube may allow, will be through Transylvania in the direction of Budapest.

The Russian troops provided for in Article 3 and intended to coöperate with the Rumanian army will be under the orders of the Commander-in-Chief of the Rumanian army.

In the event of the Russian contingent operating south of the Danube being considerably increased to such an extent as to make it of equal or superior strength to the Rumanian troops with which it will coöperate, such contingent may form, upon leaving Rumanian territory, an independent army which will be placed under the supreme Russian command. In that case, such army operating outside Rumanian territory will have a distinct zone of operations and will be conducted in accordance with the directive lines of the supreme Russian command while nevertheless complying entirely with the plans of the two General Headquarters on the bases hereinbefore agreed.

If, by reason of the object in view, military operations with combined Russo-Rumanian forces were to take place, the command of such forces would be settled by the respective zone of operations. All orders and instructions relating to the conduct of these operations will be drawn up in Rumanian and in Russian.

Article 10. In principle, in national territory as well as in territory occupied by the armies of one of the con-

tracting powers, the armies of the other shall not enter except if the general interest and the common object make it necessary and subject to written and prior consent in each particular case.

Article 11. Upon every occasion when, in the course of operations, the Allied armies shall find themselves compelled, for the carrying of troops, of provisions or military supplies, to use one or several railways upon the territory of the Allied Power, such use shall be settled for each particular case by delegates of the Main Allied General Headquarters.

The administration and organisation of transport, and the provisioning by means of local resources shall in all cases devolve upon the territorial authorities.

Article 12. Prisoners, war booty and trophies taken by one of the armies shall belong to it.

War booty taken in common battles and on the battlefield shall be divided proportionately to the effectives taking part in the battle. Nevertheless in order to facilitate the provisioning of the Rumanian army, the Russian Imperial Command shall give up to the Rumanian army such war material and munitions forming of the mixed booty, as it may urgently need.

Article 13. In order to coördinate the action of the Rumanian, Russian and Allied armies and in order more safely to reach the military objects in view, a representative of the Rumanian army, assisted if need be by a certain number of other officers, must be at the Russian and Allied Headquarters upon the opening of the Rumanian military operations. Likewise representatives of the Russian and Allied armies and their assistants must be at the Headquarters of the Rumanian army.

Headquarters of the coöperating armies must mutually inform each other and in good time of military conject-

ures, reconstruction of forces and the progress of operations.

Article 14. If, in the course of operations, situations arose necessitating the taking of new steps and raising questions not provided for in the present convention, all such questions shall be dealt with in each General Headquarters with the delegate of the Allied army, but they shall not become final until after agreement by the commanders-in-chief.

Article 15. In order that the measures preparatory to the commencement of operations may be taken in good time, the contracting parties must agree upon the plan of military operation before the day of opening of hostilities by the Rumanian army.

Article 16. Questions of armistice shall be decided by mutual agreement by the supreme commands of the coöperating armies.

Article 17. The present convention shall remain in force from the day of signature to the day of the general peace.

Made in five parts at Bucharest, August 4/17, 1916.

CHAPTER VI

COLONIAL EXPANSION

THERE are two kinds of policy as regards colonial expansion. Jules Ferry, in the eighties, used colonial policy as a method of diverting the attention of the French people from the "revanche" agitation which was exciting a dangerously active hostility on the part of Germany. Germany had grown in strength and had become considerably more than a match for France than she had been in 1870. He was successful in calming the feelings of German statesmen but he excited the suspicions of the English. Then came a substitute for colonial expansion in the Russian alliance. Mr. Ribot tried the more direct method of at one and the same time giving France a sense of self-confidence and putting a brake on aggressive anti-German tendencies. Jules Ferry's colonial expansion was factitious. France had no surplus inhabitants, no expanding industries, the prosperity of which was necessary for the support of an overwhelming industrial population.¹

English colonial expansion, on the other hand,

¹ See Barclay, "Thirty Years Anglo-French Reminiscences", chap. VII. London and Boston, 1907.

had been a natural growth in which government merely followed settlers and there has never been a conscious objective connected with any general scheme of policy among contemporary British statesmen.

The other policy is that which was pursued by Germany for the deliberate purpose at first of obtaining outlets for her surplus population which her statesmen tried to retain within her allegiance and afterwards for that of obtaining markets from which her industrial products could not be excluded.

Italian colonial policy was based on analogous requirements.

These two forms of colonial expansion policy have occupied much of the attention of the Foreign and Colonial Offices of Europe for over a generation.¹

England's colonial policy has been natural but her continental Asiatic expansion has been more or less like that of France, one of imperial conquest, conquest which the historian may be entitled to regard as that of muscular, semi-barbarous Europeans over refined races of civilised Asia, far more intelligent and thoughtful than the troops who had overcome them. As I wrote in 1914, I am not patriot enough to have any sympathy with annexation of territory not susceptible of European colonisation. I venture to quote what I then said, because

¹ Russian expansion was not colonial but connected with a geographical situation which is likely to produce the same rivalries whether Russia ultimately settles down under a Republican or an imperial régime.

it is becoming every day more applicable to the place of Europe in Asia and because President Wilson's fifth proposition shows his keen eye has perceived that native right, thought and civilisation will have to be respected by Europeans as a part of the organisation, method and policy the preservations of peace will entail :

"Much as one must admire toiling European civil servants who give their lives to good and useful administrative work, one ought to have nothing but loathing for the frivolous pretexts employed to justify the barbarous slaughter of harmless people who rise to defend their homes against the invaders and the hypocritical pretences put forward as a reason for depriving them of their independence.

"In the case of an overpeopled country there is some sort of excuse of self-preservation for the annexing of territory. To annex merely to find employment for an oversupply of candidates for the civil service is hardly fair to the rest of mankind.

"The retribution which history generally has in store for the crimes of nations is already beginning to gather on the horizon of the Far East. Those who have not the power to defend the possessions they have wrested from the weaker hands of native Asiatic communities may yet have to surrender them to conquering Powers who have borrowed Western methods of aggrandisement and with which a future generation may have to reckon."¹

¹ Barclay's "Thirty Years Anglo-French Reminiscences", p. 83. London and Boston, 1907.

President Wilson's fifth proposition deals with the colonial problem. On behalf of the Allies he has promised Europe, it is true, "a free, open-minded and absolutely impartial adjustment of all colonial claims", that is to say those of Europeans in the non-European and non-American world. But he goes further and has promised the world in general "a strict observance of the principle that, in determining such questions of sovereignty, the interests of the populations concerned shall have equal right with the equitable claims of the government whose title is to be determined."

President Wilson confines his proposition to colonial *claims*. It does not apply to settled colonies, sovereignty over which is not in question, and which do not come within the purview of the peace negotiations. In using the word "colonial", does he, however, distinguish between dependencies and colonies, that is, between non-European countries under the "mastery" of another, but which, owing either to climatic unsuitability for colonisation by Europeans or to other reasons, are without permanent colonists, and extra-European colonial settlements, properly speaking? The French lump all foreign dependencies and colonies together under the name of "colonies", such a distinction for any practical purposes not existing for France, whose only colony, properly speaking, forms part of a British dominion. President Wilson seems not to make the English distinction, no doubt for the same reason as the French, viz.: that the United States have

expanded laterally and their only foreign settlements are not colonies, properly speaking.

The President's proposition, we have seen, involves two issues. The one is impartiality in the adjustment of claims among the belligerent States, and the other, observance of the time-honoured principle, hitherto, alas, more honoured in the breach than the observance, that the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

To begin with the latter, the first French impression was that the President was claiming a voice for the indigenous populations of the countries in question. Though the original text does not necessarily bear that construction, it might have been a reaffirmation of American polity as declared at the Berlin West-African Conference of 1885, when an attempt was made by the United States representative, Mr. Kasson, to apply international law to native races in so far as regarded "recognition of the right of native tribes to dispose freely of themselves and of their hereditary territory." In conformity with this principle, the American Government, Mr. Kasson said, would have gladly adhered "to a more extended rule to be based on a principle which should aim at the voluntary consent of the natives whose country is taken possession of, in all cases where they had not provoked the aggression."¹ This suggestion, however, was not

¹ Protocol of January 31, 1886. Parliamentary Papers, C4361, p. 209.

acted upon, and the Conference confined itself to establishing rules for the occupation of Africa by European States.

Equality among Christian States and those, such as Japan, assimilated to them, is a principle of their intercourse. "Uncivilised" races and communities are not, in European practice, treated as equals. Their governments are treated as local and in such practice they are annexed to the dominions of "civilised" States without reference to their will or consent. Where treaties have been made with natives, any appeal to them has hitherto been rather by way of evidence of prior occupation than as involving any question of native right.

President Wilson says "the interests" of the populations concerned must be balanced against the title of the claimants. If this view is insisted and acted upon, it will mean either that a special charter or mandate containing protective provisions will have to be obtained from the Peace Conference or that some international authority be constituted by it, or that a special conference be held to complete and generalise the work of the Brussels African Conference of 1889-1890. In any case, I think the President is right to bring the matter forward, and it is to be hoped that one of the sections of the Congress of Peace will deal with the rights of natives by providing a charter for their protection.

The impartial adjustment of colonial "claims" involves naturally the question of the German colonies. The word "claims" may also involve

that of colonies of a size disproportionate to the requirements of the dominant nation. I am always using the word "colonies" in the vague, non-British sense. No doubt a section of the Congress will be told off to deal with this adjustment, for any attempt to repartition Africa would give rise to difficulties almost as great as those with which we are confronted in Europe.

With what territorial areas will the Congress be given by its constituents the right to deal? We have seen that the President himself confines its scope to "claims." Does the word "claims" include all areas the status of which has been changed during the War? If so, the British Foreign Secretary's statement that no colonies will be returned to Germany may be premature. Is the phrase "open-minded and impartial adjustment" intended to cover such cases as the Cape to Cairo railway, the granting of reasonable demands for coaling stations and exchanges of colonial settlements with a view to enabling different nations to have such stations? Will the scope of the Congress' powers in this connection be defined and limited? Certain German colonies will no doubt be "claimed" by other Powers as a matter of geographical right. Should not certain principles be established as to what constitutes priority among different claims?

This adjustment of colonial claims on the equitable basis of taking the reasonable requirements of claimants into account and balancing the industrial and demographic exigencies of the one and the

other, if carried out in a spirit of impartiality, may for many years check the revival of the spirit of international unrest which comes from overpopulation, overproduction, insufficient sources of raw materials and all the other causes of overseas ambitions.

Those who get the upper hand in preparing the deliberations of the Congress of Peace will do well to insist on younger men than those who are responsible for the contemporary breakdown of European statesmanship being taken into Council. The colonies are the concern of younger men. The future appertains to them and not to those who have spent their lives in the cramped and narrow space of a Europe which already begins to belong to the past and where the old men who govern it are necessarily too ignorant of new conditions, too exanimated by the fatigues of a life of petty political detail, to be entrusted with matters requiring breadth of treatment by supple minds in the prime of their elasticity and genius.

NOTE TO CHAPTER VI

NOTE ON CONSEQUENCES

ENGLAND'S POSITION AS A MOTHER OF NATIONS

As the military power of European nations in the present age of universal conscription is largely in proportion to the magnitude of their population, it is obvious that a thickly peopled country which is nearing the maximum of its productivity will fall automatically into a position of military inferiority as compared with a thinly peopled one which has a wider margin of prospective productivity.

Great Britain, though not Ireland, is approaching such a maximum.

A consequence of the necessarily restricted population of Great Britain is that as the military disproportion between her and other Great Powers increases, she becomes more dependent on her overseas emigrant population. On their loyalty to the motherland she has to rely for her raw materials, an absolutely diminishing quantity within the home area, and for her food, a relatively and conditionally diminishing quantity.

Her interest, therefore, is not only to cultivate the friendship of her neighbours but to maintain and strengthen social and racial links among all Anglo-Saxon communities without assuming that colonies will prove an exception to the universal rule of life that a healthy maturity is incompatible with the preservation of any form of suzerainty.

CHAPTER VII

CONQUEST AND ANNEXATION

THE sixth, seventh, eighth and eleventh of President Wilson's propositions deal with evacuations, the ninth with a territorial adjustment, the tenth (presumably) with the Slav populations of Austria-Hungary and the thirteenth with Poland.

These form a group to which the second of the four points set out in President Wilson's July Fourth speech refers :

"The settlement," he said, "of every question, whether of territory or sovereignty, of economic arrangement or of political relationship" shall be "upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery."

This declaration of the rights of peoples, communities and races, for it applies to all pending questions affecting groups of mankind, is in the nature of a charter for the protection of smaller and weaker groups against pretensions and ambitions of existing States and its acceptance by them

is one of the reciprocal pledges on the faith of which the War has been brought to a conclusion.¹

¹ A strange parliamentary declaration was made by the Italian Prime Minister, Signor Orlando, as reported in the *Temps* of December 17 and 18, 1918, which is not an encouraging symptom as regards the spirit in which the word of the Italian Government has been pledged. I give it "in extenso" as reported without further comment :

"Au Sénat, le président du conseil a profité de la discussion des douzièmes provisoires, pour faire connaître officiellement le point de vue de l'Italie dans les questions de réparation des attentats allemands et des garanties nécessaires pour une paix durable. Il a réservé, en quelque mesure, la liberté de son gouvernement dans l'appréciation de ces garanties.

"*'L'Italie,'* a dit M. Orlando, *'n'est pas en état de démobiliser en quelque mesure que ce soit. On doit encore garder intact tout l'appareil de guerre. Les difficultés immédiates qu'il s'agit de surmonter ne sont pas diminuées; elles sont peut-être accrues. Quant aux questions internationales, il ne convient pas d'anticiper en public sur ce qui fait l'objet de discussions particulières, et d'autre part les droits et les aspirations de l'Italie sont subordonnés à des directives d'un caractère général qui peuvent prévaloir ou ne pas prévaloir à la conférence de la paix.*

"*'Certes, les directions qui prévaudront devront être justement appliquées en Italie; les puissances alliées ont adhéré à des principes qui, par leur portée, conduiront au règlement des questions qui intéressent notre pays. Ces principes sont ceux du président Wilson. Nous les avons préconisés; ils doivent élever la guerre aux plus purs idéals d'humanité. À ces principes nous serons fidèles; mais je ne saurais dire jusqu'à quel point, car, dans la pratique, des obstacles peuvent surgir qui nous obligeront à recourir à des tempéraments.*

"*'Quant à la réparation des dommages, c'est une question qui est en dehors de toute discussion relative aux principes à adopter dans un sens ou dans l'autre. Un des postulats de M. Wilson exclut l'indemnité prise au sens traditionnel du mot, mais il est hors de doute que les directives qui seront adoptées par les autres nations pour la réparation des dommages seront adoptées aussi pour l'Italie. (Très vives approbations.)'*

"M. Orlando est convaincu qu'aucune personne de bon sens ne pourra penser qu'un des États ennemis puisse être exonéré de payer sa dette sous prétexte qu'il a pu s'effriter.

"Dans la suite du discours dont nous avons donné hier la première

There is only one form of "free acceptance" by a people known to democracy and that is the decision by the majority ascertained by secret ballot. Acceptance may be presumed from circumstances

partie, le président du conseil italien a exposé encore comme il suit les points de vue du gouvernement dans les *questions litigieuses éventuelles* (*Yougo-Slavie, Grèce, Asie-Mineure*).

"M. Orlando a déclaré :

"À cette heure décisive pour l'Italie, nous ne serons pas animés d'un esprit d'intransigeance qui nous ferait considérer des problèmes si complexes et qui doivent être résolus, seulement d'un côté. Cette méthode peut convenir surtout à qui parle pour son compte et n'assume pas de responsabilités.

"Ne voulant pas que des violences soient commises à notre égard nous n'en userons pas contre d'autres, et parce que nous sommes inspirés d'un sentiment de profonde confiance non seulement dans la loyauté — cette déclaration est d'elle-même superflue — mais dans la cordiale amitié de nos alliés, nous savons pouvoir compter sur une égale et réciproque confiance et nous sommes sûrs que toutes les difficultés objectivement existantes seront heureusement surmontées."

"M. Orlando a assuré que le gouvernement tiendra, qu'il a tenu même un très haut compte des considérations présentées par M. Tittoni sur les questions concernant l'indemnité de guerre, la *réorganisation de la Méditerranée orientale* et des colonies.

"Après avoir rappelé le rôle de l'Italie dans la guerre ainsi que l'effort et les victoires de la France, la création d'une considérable armée britannique et les inappréciables services de sa marine, l'intervention, enfin, des États-Unis et l'apport de ses écrasantes ressources qui ont été pour l'ennemi le coup de grâce, M. Orlando a revendiqué pour l'Italie le droit de faire valoir son point de vue dans toute grande question mondiale :

"Maintenant que nous obtiendrons, comme c'est notre droit primordial, de pouvoir fermer les portes de la maison (Très vifs applaudissements), que le peuple a montré son pouvoir de défendre sa maison contre toute menace, maintenant commence pour l'Italie une période de communion internationale, qui affirme son intérêt partout où les questions de caractère économique et spirituel portent l'Italie en contact avec les autres races. Il n'y a aucun impérialisme dans ce programme. Les rapports auxquels je fais allusion, j'entends qu'ils se développent dans

and it may be free according to circumstances but experience has shown that presumption of a popular opinion is open to doubt.¹

It may be difficult to proceed with due respect to democratic principles in all cases. Before a referendum can be held a register of voters must be established and this implies an electoral law fixing who is entitled to figure on the register. To adopt an electoral law the preliminary step of creating a provisional constituent assembly may be necessary. These different steps take time and meanwhile events proceed, irrevocable measures are taken, public opinion may grow excited and the *fait accompli* may become an obstacle to the exercise of principles essential to the vindication of popular rights. This seems to be the case in Alsace where the presumption is that the Alsatians are favourable to a re-transfer to French allegiance, for

la libre et féconde concurrence des activités pacifiques, mais il est essentiel que l'Italie ne soit plus absente du camp politique international, car on peut affirmer, en général, qu'il n'y a pas de question internationale ne touchant pas à un juste intérêt de l'Italie.

"Nos enfants, qui surent gagner cette terrible guerre, sauront ouvrir le radieux chemin de la paix."

"Tous les ministres et de nombreux sénateurs félicitent M. Orlando."

"On approuve, à l'unanimité, l'ordre du jour suivant accepté par le président du conseil, M. Orlando :

"Le Sénat, sûr d'interpréter le sentiment unanime de l'Italie, a pleine confiance que l'œuvre des délégués italiens à la conférence de la paix assurera à la patrie la *réalisation de nos aspirations et de ses intérêts moraux et matériels* scellés par le sang versé et par les sacrifices soutenus et couronnés par la victoire commune."

¹ The prognostications of the result of the British election of 1906 of practically the whole press of the country turned out wrong — so wrong that instead of the victory expected by the Unionists, the Liberals obtained one of the largest majorities on record.

though the Alsatian deputies to the Reichstag were not elected specifically to deal with the subject, they may be supposed to possess the confidence of the electors generally.

Annexation without the deliberate consent of the people immediately concerned, however, implies different consequences from those arising out of deliberate consent. In the latter case the people are free to judge whether the conditions are suitable and decide accordingly. In the case of presumed consent, they exercise no such option and in the absence of any presumption as to conditions, it is just that their existing laws, local institutions and privileges, religious convictions and habits be respected. This implies further that any measure of autonomy they possess be maintained until, upon all matters concerning them, the inhabitants decide otherwise. This has been the English principle of conduct towards all the European peoples within the British Empire. It applies to Scotland, Ireland, the Channel Islands and to all the colonies, to all its dependencies of European origin. It is an Anglo-Saxon principle which the Allies have accepted in accepting President Wilson's formulæ and is too precious a guarantee of popular freedom to be treated with indifference.

NOTES TO CHAPTER VII

NOTE ON LANGUAGE AS A POLITICAL QUESTION

Nobody who has not been in rural Hungary or in Macedonia can realize the meaning of what is called the "Language Question."

Within twenty miles of Budapest the traveller meets villages, — Slav, German and Magyar, — as separate from each other in appearance, habits and language as the nations of Europe.

The manager of the Hungadi enterprise told me in 1908 that he had to take his employees from one or another village entirely, for they would not mix. They were like a trade union. They worked as villages. The only advantage in a strike was that he could get a village of another race to replace them!

One of the Hungarian Ministers told me that he had to be able to speak to his constituents not only in Magyar and German but also in some Slav language and even Rumanian. On one occasion, he had not been able to make himself understood in a village of his constituency where an unfamiliar language was spoken. It turned out that this village had grown recently into importance through the return from America of emigrants who had left it a number of years earlier and that most of them knew English. He addressed them in English!

The mixture in Macedonia is of still greater variety, including Greeks as well as Rumanians and even Al-

banians. The obvious remedy for this confusion and the resulting complication of government is to enforce the teaching of a common language and this has been the policy in the United States, which might otherwise have become an exaggerated Macedonia.

When other States have tried the same system, there has generally been some rival State which had an interest, or supposed interest, to stir up resistance. In German Poland it was the neighbouring Poles, in Hungary the Rumanians, in Austria the Russians, in Macedonia the Greeks, and all have carried on political intrigues on the spot against the dominant State through the schoolmaster and excited sympathy for alleged grievances by representing the dominant State as an oppressor.

Yet, there is no hardship in adding a common language to the vernacular one. France became unified through this very process and not only *patois* of French but Breton and Basque, which are distinct languages, are nevertheless still spoken as before the union.

In ignorant and degenerate cities, among an illiterate middle class and in countries where elementary education is regarded as a means for keeping the working classes "in their place", knowledge of two languages is regarded as the privilege only of the traveller. In Russia, Germany, Norway, Holland, Belgium, Italy, ability to speak one or even two foreign languages is so widespread that Anglo-Saxon and French monolingualists belonging to a class which has the means of being properly educated are regarded as intellectual inferiors and justly so, for, in fact, those who are excluded from the bulk of their fellowmen's language, literature and thought are not equal to those who have access to them. This is observable in the self-sufficiency and aggressive ignorance of monolingualists when they judge men and things of other

countries, which they are much more prone to do under the influence of little than great knowledge.

While, on the one hand, enforcement of the learning of a common language is a reasonable method of cementing the heterogeneous elements of which all existing European States are composed, and is in the interest of the individual members and posterity of every community, the maintenance of the local language is a matter of sentimental attachment, a part of the local usage and manners with which it becomes oppression to interfere. Common language makes a united nation to such an extent that, as I have said, it has been a deliberate State method of enforcing Americanism in the United States as it was of Gallicising the inhabitants of France. Common language on the other hand has been the basis of all the nationality movements which have been agitating Europe for a century, movements which culminated in the recent war.

A reaction may now set in. Knowledge of the difficulties of carrying out a redistribution of Europe on the principle of homogeneous language, which is the only feasible test of "nationality", and due perception of the political unrest which arose out of it accentuate the reaction in favour of some form of internationalism which can preserve European peoples from international irritation due to nationalist-linguistic intrigue.

NOTE ON ALSACE-LORRAINE¹

1. Alsace

There are three distinct periods in the history of Alsace since its annexation to France under the Treaty of Westphalia in 1648.

¹ A mistranslation of President Wilson's note was circulated in France as regards Alsace-Lorraine. It misled the French not only as to his

The first is that from 1648 to the French Revolution, *i.e.* until 1789; the second from the Revolution to its annexation to Germany in 1870, and the third since then to now.

The character, traditions and presumed tendencies of a people cannot be detached from the story of its evolution, and its history, as told in the abstract by students of past records, is liable to reflect their personal bias. History is but evidence of impressions of the past existing at the time in which it is written. There are facts, it is true, which cannot be dissolved in the prisms of prejudice and there are the contemporary records themselves of events.

meaning but also as to the consistency of his propositions generally. His words were that "the *wrong done to France* by Prussia in 1871 in the matter of Alsace-Lorraine which has unsettled the peace of the world for nearly fifty years *should* be righted in order that peace may once more be made secure in the interest of all."

The French translation of this in the approved version was: "*le préjudice causé à la France en 1871 en ce qui concerne l'Alsace-Lorraine . . . devra être réparé afin que* etc." The word *devra* means in French *shall* or *must*, not *should*.

Even so judicious a critic of events as the *Temps*, as recently as October 10th, argued on the strength of this mistranslation that a reply by Germany accepting the President's proposition implied that she "accepte dès maintenant entre autres choses de restituer l'Alsace-Lorraine à la France."

Now, though the President's words did not exclude such a solution and it is practically certain that this will be the solution, the President did not say what the mistranslation of his eighth proposition implies and acceptance of it by Germany did not have the unrestricted meaning the *Temps* and other commentators assumed. Moreover, as he has laid down in the second proposition of July 4th that every question of territory shall be settled on the basis of free acceptance by the people immediately concerned, the use of the words *must* or *shall* in his eighth proposition would be inconsistent with this principle, and the last criticism the President is likely to lay himself open to willingly is that of inconsistency.

The first period in the history of Alsace — that from 1648 to 1789 — embraces a period of 141 years.

The Thirty Years' War was the beginning of a new era in which the Holy Roman Empire became more or less, so to speak, localized. It was identified with resistance, on the one hand, to nascent Germany and, on the other, to the French sovereign, monarch over a more or less unified France. The rivalry between the Hapsburgs and the Bourbons had been the keynote of French intervention in the Great War. Richelieu's policy was to occupy the left bank of the Rhine, but his object in securing an entrance into Germany was the defence of the Protestant German States against Austria. At that time Alsace was divided and subdivided into imperial landgraviates, imperial cities, the free city of Strasburg, ecclesiastical signories, villages under the overlordship of the Dukes of Lorraine and Würtemberg and the Elector Palatine.

After the defeat of the Swedes at Nördlingen in 1634 Richelieu had thought the time was come to intervene and curb the power of Austria by cutting off her communications with the Low Countries and Franche-Comté. In a few months, by invasion and diplomacy, he had succeeded. On obtaining the cession to France¹ of Alsace he gave assurances that the occupation would not be final and that on the signing of peace the occupied territory would be retroceded to the Empire.

Duke Bernard of Sachsen-Weimar contested the rights of France over Alsace. He had entered the country, nevertheless, under secret engagements with Richelieu as to territorial compensation and, on his death in 1639, Richelieu succeeded in concluding a military convention under which the French king became, though inconclusively, virtual sovereign over Alsace.

¹ Treaty of Paris. November 1, 1634.

The war continued to drag on for several years more. Attempts were made to bring about negotiations for peace, but the weaker party, hoping always for some turn of fate to extricate them from the clutches of the French and Swedes, refused to listen to any overtures from those who had invaded their territory.

At length, in January, 1647, at Münster, the preliminaries of peace were signed and the final treaty (Peace of Westphalia) concluded in October, 1648, by which Alsace was placed under the sovereignty of the kings of France without entirely emancipating it from its German neighbours.

At the outbreak of the French Revolution the Landgrave of Hesse-Darmstadt, the Duke of Würtemberg and the Bishop of Spires held fiefs and dependencies in Alsace. Mulhouse was a Republic allied to the Swiss cantons. Free cities managed their own affairs. Under a customs union with neighbouring countries on the other side of the Rhine, Alsace was economically separated from France and linked up with Germany.

"Looking at the map of France and reading the histories of Louis XIV," observes Arthur Young in 1789 in his "Travels" at the time of the Revolution, "never threw his conquest or seizure of Alsace into the light which travelling into it did: to cross a great range of mountains, to enter a level plain inhabited by a people totally distinct and different from France, with manners, language, ideas, prejudices and habits all different, made an impression of the injustice and ambition of such a conduct much more possible than reading had done. . . ."

In short, there was no effective annexation of Alsace during the French monarchy.

"Doubtless," says Professor Séailles, summing up the transition over the centuries of Alsatian history to absorption into the French Republic at the end of the eighteenth century, "for many hundred years Alsace had belonged to the Holy Roman Empire and had been mingled more or less with its history. But the Roman Empire was not a modern State and still less a nation. It included principalities, bishoprics, electorates, free towns with their laws, customs and existence, only attached to it by a more or less nominal bond of suzerainty. In 1648 at the signature of the treaties of Westphalia the Empire gave up Alsace to France, as a reward for the protection accorded by the king to the protestant princes of Germany. Such a transmission of suzerainty was then in nowise contrary to the law of nations. Peoples were not their own masters, and provinces, never dreaming of protesting, went from hand to hand, by contract, marriage, inheritance, ruse or violence. The wisdom of the royal government respecting their tongue, traditions and religion soon made good and loyal subjects of the Alsatians. The French Revolution crowned the work begun by the French kings: the suppression of privileges, feudal rights and all the complications and inequalities of the old order were welcomed enthusiastically."

It is an amazing instance of the sympathetic character of French culture that although the French domination anterior to 1870 had only been truly effective from the Revolution onwards, that is some twenty years longer than since the annexation of Germany, it has not been effaced either by deliberate effort or by the greater material prosperity Alsace has since enjoyed. It is estimated by German authorities themselves that as many

as twelve per cent. of the population of Alsace-Lorraine still speak French habitually, eighty-seven per cent. speak the Alsatian dialect, and only ten per cent. neither, that is High German, habitually.

The difficulty of finding a solution for the question of Alsace is not so great as that of finding a solution which will assure the peace of Europe and not merely pass the grievance from one side of the Rhine to the other.

Professor Séailles reminds us of the German claim made to Alsace from 1813 to the War of 1870. "Fichte," he says, "with splendid daring, in the very sound of Napoleon's drums, delivers his celebrated 'Speech to the German Nation', in which, uplifting its courage, he inflamed its pride. 'The German Nation' is henceforward a living active idea, — its unity is not accomplished, but it exists in the thought of learned men and philosophers, the will of patriots and the ambition of statesmen. In 1813, after the retreat of Russia, Germany rises up for the War of Independence. The French armies are not yet driven out, — they still occupy Hamburg, Lübeck, Danzig, big German towns, when already eager, passionate voices ring out in denunciation of the Treaty of Westphalia, which recognizes and sanctions the overlordship of France on German soil. In his pamphlet: 'Der Rhein Deutschlands Strom, nicht Deutschlands Grenze' (The Rhine, a river of Germany, not a frontier of Germany), the poet, Moritz Arndt, vehemently reclaims Alsace and exacts 'the frontier should stretch as far as echoes the German tongue.' Pamphlets, poetry, newspaper articles catch up the refrain, develop and enlarge it in a peculiar mixture of earnestness and pedantry. Princes, generals and ministers are all moved with the same passion. All expect from victory and diplomacy the realisation of their national hopes."

"Hardly had Napoleon III," he goes on elsewhere, "fallen in the snare Bismarck stretched for him, and long before any decisive event, the German intellectuals, Strauss, Mommsen and so on, like their fellows of 1813, in papers, pamphlets and open letters, lay down the problem of Alsace and demonstrate that this soil of the Empire ought to come back to Germany, whatever may be its will, by the simple reason that it belonged to Germany in the past."

The question of the reannexation to France of Alsace is not an easy or simple proposition, especially as it is complicated by a religious question, the greater part of the population being Roman Catholic. At Thann, where the French have been in possession since 1914, the existing institutions have been respected and no attempt made to supplant them by those of France. It is not consistent with French constitutional polity that this recognition of separate institutions should be extended to the whole province, but it is difficult to see how any other method will satisfy the Alsatians.

If the polity of France were that of the United Kingdom the difficulty would be singularly diminished.

By granting Alsace independent institutions, religious as well as social, by allowing it to keep its own laws, following the example of the United Kingdom in respect of Scotland, or following the British example in Ireland by even granting it Home Rule, the internal problem, if it arose, might be more easily solved.

As regards external difficulties, even this relative independence may not prevent the revival of the old

¹ "Alsace-Lorraine: The History of an Annexation", by Gabriel Séailles, Professor at the Sorbonne, Paris, 1916.

patriotic agitation for the recovery of the province by Germany.

Two other solutions, — annexation to Switzerland on the one hand and neutralization on the other — have been suggested, but there has been no manifestation of opinion among the Alsatians themselves in favour of either.

2. Lorraine

The question of Lorraine is a totally different one from that of Alsace. There has never been a difference of opinion concerning the racial affinity of the inhabitants of the part of Lorraine annexed to Germany in 1870. They not only speak the French language but geographically form part of the ancient province from which the part in question was deliberately detached on grounds of defence against repetition of the French aggression of 1870.

It has been stated again and again during the War that the preservation of Metz as a defence against French invasion has ceased to have any serious importance. I do not venture to express an opinion on the subject beyond remarking that, whether it is so or not, and whether intentionally or not, and whether merely owing to shortage of the necessary artillery or not, French armies let Metz alone.

The strategical question may, as alleged, have lost importance. After 1870, however, Lorraine acquired for Germany an economic importance which quite overshadows the alleged original considerations. I say "alleged" because it seems incredible that Bismarck should not have known that geologists did not confine their calculations of the extent of the iron-ore strata to

the area then in course of being worked in Lorraine. He was a politician and not an economist and possibly did not expect Germany to become the second greatest metallurgist in the world. Otherwise he might have annexed the whole iron field — the *Bassin de Briey* — for France was at his mercy.

Of the total iron-ore resources of Germany in sight, namely, 2,840,000,000 tons, 2,130,000,000 tons are credibly estimated to be the proportion supplied by the Lorraine-Luxemburg district. Of the probable further resources of 1,067,700,000 tons the proportion credited to Lorraine-Luxemburg is 500,000,000 tons.

This Lorraine-Luxemburg district is one of the largest known iron-fields in the world. It is about evenly divided — between Luxemburg and German Lorraine on the one hand and French Lorraine on the other.

M. Tribot Laspière in the *Génie Civil* (April 7, 1917) places the contributive proportion of Luxemburg of 270,000,000 tons at between one ninth to one tenth of that of German Lorraine.

It is seen that German Lorraine has played a very important part in German metallurgy — no less than eighty per cent. in her iron supply.

In an instructive little treatise by M. Francis Laur — *La France, reine du fer* — the author demonstrates the enormous superiority in ore production of France over both Great Britain and Germany and establishes the proportion of fifteen for France against one half for England and one for Germany. France, in fact, has twenty-nine times more iron ore in sight than Great Britain and fourteen times more than Germany, without of course counting the German Lorraine which if reannexed to France would raise *pro tanto* the proportion in

favour of France and against Germany. M. Laur estimates, however, that German Lorraine alone smelts as much ore as the whole of France.

The iron-fields of the whole Lorraine district are estimated at the present rate of extraction of 20,000,000 tons per annum to have a life of about eighty years still to run.

If France is the *Reine du fer* in Europe, she is far from the *Reine du charbon* — at least in production. Geologists, nevertheless, assert that she is one of the most favoured countries in Europe in possession of coal seams capable of development. Anyhow, France meanwhile suffers from a coal shortage while Germany has more than she can employ within her own boundaries.

M. L. de Launay in *La Nature* (May 4, 1918) estimates that the restoration of Alsace-Lorraine to France would be tantamount to an addition of fifty per cent. to the coal production of France, but he assumes that the whole of the Saar coal-field, which before 1815 was under French rule, will be comprised in the reannexation.

As regards the *Bassin de Briey* in French Lorraine it produces more ore than French metallurgy requires. Nearly half of it, M. Tribot Laspière calculates, before the War was exported to foreign countries, twenty-four per cent. to Belgium, six per cent. to Luxemburg, ten per cent. to Germany and one per cent. to Great Britain.

The whole *Bassin de Briey* was under German occupation and probably at its maximum exploitation from the beginning of the War.

By way of postscript I may add as regards Alsace in reference to the famous potassic deposits at Mulhouse, that the whole production, owing to other large deposits in Germany, is available for export.

If the question of raw materials is destined to play an important part among the sanctions proposed for the preservation of peace in the future, international interdependence in relation to them is necessarily a condition of their efficacy.

NOTE ON "READJUSTMENT OF THE FRONTIERS OF
ITALY"

President Wilson in his ninth proposition says that "readjustment of the frontiers of Italy should be effectuated along clearly recognisable lines of nationality."

"Nationality"!

What is nationality? Does the President mean, like the author of the famous German patriotic song: "Wo ist des Deutschen Vaterland" which kindled the German claim to Alsace, with the refrain: "Wo die deutsche Sprache klingt", that the Italian Fatherland is wherever the Italian language is spoken? If this is the meaning and speaking the same language is to be a principle, condition or motive in the readjustment of Europe, there is an obvious conclusion as regards Alsace. But in practice language is no test within the area of the Mediterranean or in that which extends south of the great line of mountain ranges which separates southern from northern Europe. Any attempt to apply it would result in a hopeless tangle of racial riddles and political uncertainties, as anybody who knows Hungary, the Balkans and the Mediterranean will testify. It would affect almost every habitable square mile of the whole area and imply a readjustment in accordance with the there prevailing linguistic chaos.

As regards the Italian language in particular it has remained in one form or another, since the time of the maritime supremacy of the Italian republics, a common

vehicle of speech along the whole of the Eastern Mediterranean seaboard, from Tunis to Nice, even in the Levant where the Byzantine Greek influence resisted and maintained *its* supremacy.

If nationality cannot for any practical purpose be regarded as a test, what is the alternative?

Race?

Who is capable of speaking at the present day with any certainty of race apart from language?

Historically speaking, nationality is a political fact based on the existing circumstances of modern State development in which geographical and economic considerations, commercial outlets, the course of navigable rivers, mountain ranges, mineral resources and all the material requirements of existing communities working out their own salvation amid the contending rivalries of their neighbours are creating common interests, a common polity and a common language out of sheer necessity.

It must be, I think, in this sense that a historian like President Wilson speaks of "nationality" and of its "clearly recognisable lines." In other words, if they are not clearly recognizable; if they do not tally with geographical and economic situations, the lines would not be clearly recognisable.

The following observations of a belligerent statesman, if not complimentary to all Italian statecraft, are, at any rate, interesting. I leave them to speak for themselves:

"Italy is in a totally different position in the present war from France or England. France was deliberately attacked. England came to her assistance under treaty obligations in defence of Belgium and, by extension, of France. In neither case was there an option. Both are

in the war for self-preservation — Italy entered the war frankly for conquest and honestly and straightforwardly she made no attempt to disguise her purpose. The story of how she came into it has been undisguisedly told in the Italian 'green book.'

"I do not think the most passionate lover of any country or its people is bound to respect any government which may happen to be in office any more than true patriotism binds him to respect that of his own. This platitude applies to more than one country engaged or disengaged in the present war. I must confess that after reading every word of the Italian 'green book' from start to finish I can find no palliative for Italian motives in regard to the war and, if it was popular in Italy, this must be ascribed to the same causes that have made the war popular everywhere — causes of many kinds which every department of enquiry will have to sift out and analyse before modern scepticism will begin to entertain any sense of appeasement.

"The Italian government began by making a claim for compensation under Article 7 of the Austro-Italian treaty of alliance (of which the text is not given) for possible changes of equilibrium in the Balkans which might result from the Austro-Hungarian invasion of Serbia.

"The text of the article in question is as follows:

"'Austria-Hungary and Italy, who aim exclusively at the maintenance of the *status quo* in the East, bind themselves to employ their influence to hinder every territorial change detrimental to one or other of the contracting Powers. They shall give each other reciprocally all explanations requisite to the elucidation of their respective intentions as well as of those of other Powers. If, however, in the course of events the maintenance of the *status quo* in the territory of the Balkans

and on the Ottoman coasts and islands of the Adriatic Sea and the Ægean becomes impossible, and if, either in consequence of the procedure of a third Power or of other causes, Austria and Italy be constrained to change the *status quo* by a temporary or lasting occupation, this occupation shall take place only after previous agreement between the two Powers on the basis of the principle of a reciprocal arrangement for all the advantages, territorial or other, which one of them may secure outside the *status quo* and in such a manner as to satisfy all the legitimate claims of both parties.'

"A long correspondence lasting from December 9, 1914, to May 4, 1915, ensued in which both parties were obviously talking against time, the one preparing for war and the other hoping the war would come to an end before the other was ready.

"The negotiations were conducted with the utmost secrecy which Baron Sonnino on behalf of the Italian government insisted upon and the secrecy applied even to the Italian parliament which he states in the 'green book' he had no intention of taking into his confidence.

"As the correspondence proceeds Baron Sonnino, who seems to be acting without any mandate whatsoever from even the government of which he is a member, and certainly none from the parliament to which he is responsible, offers Austria-Hungary a free hand in Serbia in return for compensation which he eventually claims in eleven articles covering all the Italian-speaking fringe of Austria and more, the Dalmatian Islands, demanding recognition of Italy's absolute sovereignty over Valona and renunciation of Trieste, to be made a free port alongside the new Italian frontier. In return for immediate execution, i.e. immediate possession, Italy was to undertake to maintain 'perfect neutrality' during the war.

Baron Burian declined to accept all this programme and especially to grant immediate possession and Italy thereupon declared war.

"Throughout the correspondence Baron Sonnino constantly refers to the 'national aspirations' of the Italians, the prevailing sentiment favourable to the Western Allies and the danger of letting the public know that negotiations were pending. One rises from the perusal of it with a sense of the appropriateness of President Wilson's demand in the third of his propositions as set out in the speech of the fourth of July when he asked for 'the consent of all nations to be governed in their conduct towards each other by the same principles of honour and respect for the common law of civilised society that governs the individual citizens of all modern States.'

"President Wilson in the second of the July fourth principles requires that the settlement of every question 'whether of territory or sovereignty, of economic arrangement or of political relationship' shall be determined on the 'basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own extension, influence or mastery.'

"The President has not intimated whether he regards this of application just as much to populations of a few thousands as to those of millions.

"If it applies to a rectification of the Italian frontier it will be necessary to ascertain the feeling of the populations which may be no more desirous, for aught we know, of being annexed to Italy than French Canada or Mauritius at the present day is of reannexation to France.

"A witty Italian has said of his country that it is like a veal chop *à la Milanaise*, the more you beat it,

the wider it grows. That Italy will 'widen' northwards under the contingent promise of President Wilson's ninth proposition is more than probable. All her Balkan claims will necessarily be subordinated to the general settlement of the Balkans in which the claim of Serbia to a seaboard as a geographical necessity has now been recognised by Italy. Whether they will coincide with Baron Sonnino's claim to the annexation of the Dalmatian Islands or of Valona remains to be seen. In any case, a promise has been made to all the peoples concerned in such transfers from one sovereignty to another that their consent shall be obtained — and their consent cannot be, at least according to Anglo-Saxon ideas, a matter of surmise, whatever the degree of probability."

CHAPTER VIII

FREEDOM OF NAVIGATION

I MUST confess that I feel some anxiety in approaching this subject. President Wilson in his second proposition demands *absolute freedom* of navigation "alike in peace and in war."

Absolute freedom of navigation is surely incompatible with war! Freedom in war time can never extend beyond the limits laid down by the traditional policy of the United States, and international practice has not yet reached even that stage.

"A belligerent nation," wrote the Department of State at Washington on March 30, 1915, "has been conceded the right of visit and search, and the right of capture and condemnation if upon examination a neutral vessel is found to be engaged in unneutral service or to be carrying contraband of war intended for the enemy's government or armed forces. It has been conceded the right to establish and maintain a blockade. It is even conceded the right to detain and take to its own ports for judicial examination all vessels which it suspects for substantial reasons to be engaged in unneutral or contraband service and to condemn them if the suspicion is sustained. But such rights,

long clearly defined both in doctrine and practice, have hitherto been held to be the only permissible exceptions to the principle of universal equality of sovereignty on the high seas as between belligerents and nations not engaged in war.”

The United States delegates at the Hague Conference of 1899 submitted the following resolution which may be taken to represent the United States’ extreme view :

“The private property of all citizens or subjects of the signatory Powers, with the *exception of contraband of war*, shall be exempt from capture or seizure on the High Seas or elsewhere by the armed vessels or the military forces of any of the said signatory Powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may *attempt to enter a port blockaded* by the naval forces of any of the Powers.”

The same resolution was submitted at the second Hague Conference in 1907.

It is seen that absolute freedom does not exist in war time, but subject to the restrictions set out in the above resolution England can only endorse the President’s claim. In fact the British Government in a despatch dated September 26, 1914, upheld the same view of the principle of freedom of the sea.

“The freedom of the seas for peaceful trading is an established and universally accepted principle; this fact has never been more clearly recognized than in the words of the report of the third committee of the Second Peace Conference which

dealt with the question of submarine contact mines: — Even apart from any written stipulation it can never fail to be present in the minds of all that the principle of the liberty of the seas, with the obligations which it implies on behalf of those who make use of this way of communication open to the nations, is the indisputable prerogative of the human race.”

If this is the principle, there can be no absolute freedom of navigation so long as the right of search for contraband, and even the contingent right to stop and in case of need overhaul the cargo to ascertain whether the ship's papers tell the truth are maintained. Perhaps President Wilson means something new, but it is difficult to conceive a change implying even that neutral ships shall be permitted to carry contraband to belligerents without “let or hindrance.”¹

As regards freedom of navigation in time of peace, President Wilson's thesis is also open to an objection, the objection that his meaning is not clear. In time of peace the only restrictions on navigation since the old and now extinct attempts to exert dominion over the sea beyond the territorial waters' limit are just those the President refers to in his proposition, viz.: those instituted by international covenants such as “fishery agreements”, the “sale-of-drink-at-sea conventions”, “slave-trade-prevention arrangements” in the Indian Ocean. Otherwise absolute freedom of navigation exists everywhere.

¹ Mr. Lansing's letter of November 5th (see p. 30) merely releases reservations made by the Allies without specification of their nature.

Does President Wilson refer to the German contention that there is no real freedom of the sea unless independent coaling stations are available for the navigation of every nation having a considerable merchant marine? Does he mean that the power to close the Mediterranean or the Suez Canal, or the Panama Canal, or the Dardanelles are restrictions on the freedom of navigation? Does he mean any or all of these?

I will assume that he means them all.

As regards coaling stations, it is not an unreasonable contention that facilities should be granted to enable the navigation of different nations to proceed without necessity of recourse to foreign aid or exposure to foreign interference. The difficulties are physical and material. Two antagonistic views, however, may both be reasonable. This is all I think it desirable to say at present on a subject which does not lend itself to controversy while negotiations are pending.

President Wilson does not refer in detail to any maritime channel but the Dardanelles, of which he says that they "should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees."

The experience of Belgium shows how little reliance can be placed on the word "guarantees" if it is merely used as meaning a written pledge. Belgium's neutrality was guaranteed. President Wilson evidently does not suggest that the freedom

of the Dardanelles, Sea of Marmora and Bosphorus should depend on the bare promises of a treaty, but probably that it should be guaranteed effectively, that is, let us suppose, by an international commission sitting permanently on the spot and managing the straits, not merely as regards legal supervision, but as regards the physical aspects of their navigation, the policing of their user, the maintenance of existing and erection of new lighthouses, if need be, and all that is necessary to insure free and safe navigation. This is not only feasible but highly desirable, and I venture to suggest that dangers to navigation should not anywhere be left solely to the devices of the adjacent States but that the expense of providing against such dangers should, as a common interest and in common justice, be proportionately shared by those who share in the benefit.

It has been suggested that all channels communicating between open seas should be internationalised, that the Suez and Panama canals should never be liable to closure, but should be as free for traffic as the high sea itself. Already they are supposed to be open to all the world on equal terms. The suggestion is that the traffic through them should be placed under the direction of International Boards, that the expenses of keeping them open and in good condition should be borne by proportional contributions on the part of the States using them and, of course, that the territory necessary for the exercise of such direction should be as inter-

national as the canals themselves and in all possible contingencies be inviolate. There is a great deal to be said in favor of such a view.

There are also the Straits of Gibraltar. So long as the rock of Gibraltar exists it will dominate the straits. A Spanish political leader of the greatest eminence, while out of office, during the War and not long ago, raised the question of restoring it to Spain. Contiguity obviously is not a reason for doing so. It is practically an island and has been for over two hundred years a British possession. Its importance for most nations is that possession of it should not be abused. England has exercised her possession in keeping the straits open. Can any other State be trusted to conduct itself better? The only practical alternative would be suppression — that is suppression of the fortress. This would not insure the freedom of the straits unless the two coasts were placed under some international *régime* guaranteeing the maintenance of the suppression. Otherwise, it would be upon the good faith of the government of some other State or States that the due observance of engagements entered into would depend. If so, then why propose any change — England has not shown any greater indifference to international engagements than other States. She has the power to keep the straits open, a power which Spain does not possess. She can maintain her possession while Spain might not be strong enough to resist capture by a more powerful surrounding enemy. I offer

these arguments for consideration by those who suggest that British possession of Gibraltar is not in the general interest. There are many situations that are anomalous and open to criticism, but it is always easier to criticise than to do better.

That the President includes in this second point what is called "England's mastery of the sea" is not likely. That mastery has never been used in peace time for any purpose inimical to the interests of any self-respecting States and since the adoption of the Hague Convention of 1907 making the Drago theory a part of International Law, she cannot even use her maritime power against those who fail in their civil engagements.

The President can hardly have in view the reversal of a geographical fact. England's supremacy at sea has no reference to objects of conquest or coercion, but is a necessary consequence of her island position and the insufficiency of her possible food supply to meet the requirements of a population growing at a rate far exceeding any prospective increase of such food supply from domestic sources. It is not an "offensive" element in her policy, but a purely "defensive" one. It means securing the connection between an island State and the outer world and especially with the colonies and dependencies which are the chief source of her different supplies of all kinds, for just as the stomach of a people needs food, the stomach of their mills and factories needs materials.

All the old ideas of exercising dominion over any area of the sea are dead and international association for the perservation of equality for all is likely to be one of the fundamental axioms of future statesmanship beyond the scope of political controversy.

In his message of December, 1854, President Pierce referred to then pending suggestions on the subject in the following terms:

"The proposal to surrender the right to employ privateers is professedly founded upon the principle that private property of unoffending noncombatants, though enemies, should be exempt from the ravages of war; but the proposed surrender goes but little way in carrying out that principle, which equally requires that such private property should not be seized or molested by national ships of war. Should the leading Powers of Europe concur in proposing, as a rule of international law, to exempt private property upon the ocean from seizure by public armed cruisers as well as by privateers, the United States will readily meet them upon that broad ground."

The refusal of the United States Government to sign the Declaration of Paris, it is well known, was a consequence of the refusal of the Powers to agree to this proposal.

Secretary Fish concluded, on February 26, 1871, a treaty with Italy, Article XII. of which provides that in the event of war —

"The private property of the citizens and subjects (of the contracting States), with the exception of contraband of war, shall be exempt from capture or seizure, on the high seas or elsewhere, by the armed vessels or by the military forces of either party; it being understood that this exemption shall not extend to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of either party."

In his message of December, 1898, President McKinley again asserted the American doctrine on the subject in the following passage:

"The experiences of the last year bring forcibly home to us a sense of the burdens and the waste of war. We desire, in common with most civilised nations, to reduce to the lowest possible point the damage sustained in time of war by peaceful trade and commerce. It is true, we may suffer in such cases less than other communities, but all nations are damaged more or less by the state of uneasiness and apprehension into which an outbreak of hostilities throws the entire commercial world.

"It should be our object, therefore, to minimise, so far as practicable, this inevitable loss and disturbance. This purpose can probably best be accomplished by an international agreement to regard all private property at sea as exempt from capture or destruction by the forces of belligerent Powers. The United States Government has for many years advocated this humane and beneficent principle, and is now in a position to recommend it to other Powers without the imputation of selfish motives. I therefore suggest for your consideration that the Executive be authorised to correspond with the Governments of the principal maritime Powers, with a view of incorporating into the permanent law of civilised nations the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerent Powers."

Resolutions were introduced in both Houses of Congress endorsing this recommendation. The shortness of the session, however, prevented final action on the resolutions, "but the sentiment which was developed was overwhelming in favour of adopting the rule of exemption, under proper restrictions as to contraband and blockade. Congress at the same session passed the Naval Personnel Bill, which abolished prize money, thus removing one

of the strongest incentives for capture of private property, and eliminating all questions as to the rights of seamen and officers."

The subject, it is seen, has been consistently kept in the foreground by successive Presidents, and it has repeatedly been brought to the notice of foreign governments; but owing chiefly to the unwillingness of Great Britain to countenance change in the existing practice, acquiescence on the part of other governments has remained until now without effect.¹

This brings us down to the following proposition made in 1899 by the American delegates at the Hague Conference:

"The private property of all citizens or subjects of the signatory Powers, with the exception of contraband of war, shall be exempt from capture or seizure on the high seas or elsewhere by the armed vessels of the military forces of any of the said signatory Powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of any of the said Powers."

This proposition is not clear. The words "or seizure" in the phrase "exempt from capture *or seizure*", which, by the way, are borrowed from the Italo-American Treaty of 1871, do not tally with the reservation as to contraband. Seizure may be indispensable to ascertain whether the arrested vessel has contraband on board or not.

The Conference ruled that the subject was beyond the

¹ In 1870, on the outbreak of the Franco-Prussian War, Count Bismarck telegraphed to the Prussian Minister at Washington: "For your guidance, private property on high seas will be exempted from seizure by His Majesty's ships without regard to reciprocity." The exemption, however, was not maintained by Prussia.

scope of its deliberations. The same proposition was renewed at the Conference of 1907 but it has not yet been subjected to any searching official examination.

The discussions on the subject of immunity have generally down to now been based on the assumption that the object of reform should be to assimilate property at sea to property on land, that the natures of war at sea and war on land are identical, and that immunity of private property on land is already admitted as a principle of International Law.

I shall endeavour in this note to clear away some of the obscurity which has resulted from a too desultory treatment of the subject, to examine it in its connection with the recognised laws of war generally, to discuss whether indeed, in itself, immunity is desirable and whether it is possible for a great maritime country like England to agree to the gratuitous alienation of a right which is necessarily of supreme importance to it.

The object of war is to force the antagonist to sue for peace. It is the *ultima ratio* in all international differences. Originally the belligerent exercised the right of life and death over the whole armed and unarmed population against which he was warring, and he claimed the same absolute power of disposition over all their property. It is an armed conflict between communities or nations. These communities or nations may be represented by constituted authorities and armies—but it is not a duel confined to these authorities and armies. Armies are recruited from the communities and nations behind them, and it is on the vitality and material resources of these communities or nations that the continuance of the war depends.

Attenuation of the cruelty of war followed the rise of standing and regular armies and the consequent more

marked distinction between soldier and civilian. They took the form of compounding for plunder, of systematic requisitions and contributions, the confining of the right of levying these to generals and commanders-in-chief, the institution of quittances or bills drawn by the belligerent invader on the invaded power and handed in payment to the private persons whose movable belongings are appropriated or used, and of war indemnities. These were methods of lessening the hardships of war as regards private property on land of the subjects of belligerent States.

Their object, however, was not to arrive at immunity, but to develop an organised system by which damage and losses to individuals, whom the fortune of war had brought into immediate contact with the enemy, can be spread over the whole community. Those, therefore, who speak of the immunity of private property in warfare on land do not accurately describe the existing state of things.

To substitute systematic for chaotic seizure and plunder on land was obviously in the interest both of invader and invaded, and humanity in this as in many other cases has only been another term for the common interest of mankind.

Grotius described war as the letting loose of "some fury with a general licence for all manner of wickedness", and now we know, and let us hope will remember for some years to come, the terrors of an invasion which has meant the seizure of the food on which the inhabitants of the invaded country were dependent for existence, the carrying away of bedding, implements and horses, the slaughter of livestock, the appropriation of the stored seed grain, not to speak of gratuitous barbarities, the most reasonable explanation of which was a terrorisation which missed

its purpose, even when all those cruelties were practised systematically.

The considerations which have led mankind to regulate the practice of war in regard to private property on land do not arise in the same form in connection with private property at sea. Here there is no question of seizing the livestock or the bedding, or the food or the utensils of the private citizen. Only mercantile ventures are concerned. If ship and cargo are captured it may be hard upon the merchant but such captures do not directly deprive him of the necessities of life. Yet, as in the case of war on land, its hardships have been attenuated, and progress has been made by developing a more systematic procedure of capture of private property at sea. Thus exemption from capture is now allowed by belligerents to enemy merchant ships which, at the outbreak of war, are on the way to one of their ports, and they also allow enemy merchantmen in their ports, at its outbreak, a certain time to leave them. A somewhat similar practice exists as regards pursuit of merchant ships which happen to be in a neutral port at the same time with an enemy cruiser. Privateering was abandoned by the Powers which signed the Declaration of Paris of 1856, and so strong is public opinion in Europe against it that the United States and Spain in their war, though not signatories of the Declaration, both spontaneously waived the right to resort to it.

Yet the only difference the abolition of privateering makes is the substitution for amateur or irregular warships of vessels officered and enrolled as a part of the official navy.

Lastly grew up, on grounds similar to those which have led to the indulgence shown to private property on land, a now generally recognised immunity from cap-

ture of small vessels engaged in the coastal fisheries or petty local navigation and their appliances, rigging, fittings and cargoes, provided they are in nowise made to serve the purposes of war, an exemption which has been confirmed by the Hague Convention of 1907 numbered XI.¹

This has all been done with the object of making the operations of war systematic, and enabling the private citizen to estimate his risks and take the necessary precautions to avoid capture, and of restricting the acts of war to the purpose of bringing it to a speedy conclusion.

We have seen that there is no immunity for private property yet known to the laws of war. War, by its very nature, prevents the growth of any such immunity. The tendency in war on land has been to spread its effects over the whole community, to keep a record on both sides of all confiscations, appropriations and services enforced against private citizens, but beyond this no protection has thus far been given to private property on land.

The object of each belligerent is to break the enemy's power and force him to sue for peace. To break his power it is not enough to defeat him in the open field; he must be prevented from repairing his loss both in men and in the munitions of war and this implies crippling his material resources, trade and manufactures.

To capture at sea raw materials used in the manufacturing industry of a belligerent State, or products on the sale of which its prosperity, and therefore its taxable values depend, is necessarily one of the objects, and one of the least cruel, which the belligerents pursue.

To capture the merchant vessels which carry these

¹ See Barclay, "International Law and Practice", p. 173. London and Boston, 1917.

goods, and even to keep the seamen navigating them prisoners, is to prevent the employment of the ships by the enemy as transports or cruisers and the repairing from among the seamen of the mercantile marine of losses of men in the official navy.

It is questionable whether war should be made less a calamity than it is — that is, beyond the elementary principle that individuals should be made, as little as possible, to suffer for the acts of the community.

The assimilation of private property at sea to private property on land would mean that the State to which the captured vessels belonged should indemnify the ship and cargo owners for their loss. Such indemnification has become a principle in war upon land, and it may become a question of the future how, by domestic regulation, to deal with captures by the enemy of property at sea.¹ The cases, however, are not exactly the same.

After the outbreak of war shipowners and shippers belonging to a belligerent State know the risk they incur in sending ships or goods across sea. They have the option of keeping their ship or cargo in port, or of paying war rates of insurance, or again, the shipper has the option of sending his goods under the protection of a neutral flag. If they expose their ship or cargo to the risks of capture, it is because they have calculated the chances of escape, and have chosen to run the risks. To indemnify them for losses incurred might be to relieve the shipowner and shipper from the consequences of their want of foresight and caution.

As a matter of fact, if a proper valuation of outgoing ship and cargo were recorded, the State whose flag the

¹ See Barclay, "Problems of International Practice and Diplomacy", p. 200. London and Boston, 1907. A discussion of the question of national indemnification for captures in time of war.

ship carried might indemnify the owner, and thus a loss suffered by the individual citizen be spread over the community. Means may some day be devised of so indemnifying for capture where combined with a licence to put to sea. No experiments in this sense seem yet to have been made.

States, from motives of expediency, may agree not to capture the property of private citizens during a particular war with each other, as in the case of Italy and Austria in 1866, or they may by treaty provide for similar immunity of their respective private citizens in the event of a future war between them.¹

The United States have made it an article of their policy to insist upon the adoption of immunity of private property from capture as a primary principle in the reform of the law of maritime warfare. England has as resolutely upheld the contrary principle. Both have been actuated by their own interest. Napoleon Bonaparte considered that the greatest blow which could be dealt to England would be to compel her to give up her maritime rights.² And Nelson was of the same opinion, holding that nothing could be more injurious to the English interests than the adoption of "free ships, free goods", which is now, nevertheless, the rule binding upon England under the Declaration of Paris.

Whether it is expedient for England at the present day to agree to the immunity of private property at sea

¹ See Barclay, "Problems of International Practice and Diplomacy", p. 70, London and Boston, 1907; technical difficulties involved in the question of immunity and at pp. 172 *et seq.*, 176 *et seq.* draft forms of treaty dealing with assimilation of enemy private property at sea to neutral private property at sea and with assimilation of enemy private property at sea to enemy private property on land respectively.

² Halleck, Vol. II., p. 17.

from capture, must be dictated by the circumstances of the particular war in which she engages. It is quite conceivable that different considerations would weigh with her in a war with the United States from those which have arisen in war with Germany. In the case of the United States it might be in the interest of both parties to localise the operations of war, and to interfere as little as possible, perhaps for the joint exclusion of neutral vessels, with the traffic across the Atlantic. In the war with Germany, England has been forced into closing the high sea to all traffic by the merchantmen of the enemy not only in her own but in the general interest of her allies.

Apart from expediency, however, necessity of war, that is the necessity in which, by the nature of things, a belligerent party is placed of preserving its own forces against destruction, and of defeating the forces of the enemy, must always stand in the way of any abandonment of the belligerent right to seize all the enemy's property, whether private or public, which can serve to prolong his resistance. Any attenuations as regards private property have never extended beyond the prevention of wanton destruction and plunder, and the equalisation of the burden of the losses, and it is difficult to see what further can be done in the common interest so long as mankind continues to seek solutions in destruction and bloodshed.

CHAPTER IX

ARMAMENTS

PRESIDENT WILSON in his fourth proposition demands "adequate guarantees" for the *reduction* of armaments.

What meaning does he attach to *guarantees* and what to *adequate*?

Napoleon obtained guarantees from Prussia and imposed a reduction of her armed forces to a maximum limit. She observed the form; nevertheless, at the battle of Leipzig she brought six or seven times that maximum into the field and the military power of Prussia dated from guarantees which Napoleon must have considered adequate, seeing that at the time he imposed them he was absolute master to prescribe any conditions he thought fit.

A century later the problem of "preparedness for war" occupied the minds of all European statesmen. One set of them thought to conjure the danger of war by preparing for it and this led to a competition in armaments which was a source of much profit to a few, even many, and of high wages to an increasing mass of labour. Preparedness for war was alleged to be guarantee of peace. Another

set thought that just as increase responded to increase diminution might respond to diminution, which as a logical proposition is unanswerable.

“... The constant danger involved in the accumulation of war material renders the armed peace of to-day a crushing burden more and more difficult for nations to bear. It consequently seems evident that if this situation be prolonged it will inevitably result in the very disaster it is sought to avoid, and the thought of the horrors of which makes every humane mind shudder. It is the supreme duty, therefore, of all States to place some limit on these increasing armaments and find some means of averting the calamities which threaten the whole world.”

The author of these words, from the Russian note of 1898 proposing that an international conference be held to deal with the question of excessive armaments, seems to have had a prophetic vision of the World's War.

The answers of the Powers to the Russian proposal were unanimously favourable and, as the reader will remember, the first Hague Conference of 1899 was the outcome of the Russian suggestion.

At the Conference the Russian Government submitted the following propositions:

“1. Establishment of an international understanding for a term of five years stipulating non-increase of the present figures of the peace effectives of troops kept up for home use.

“2. Fixation, in case of this understanding being

arrived at and, if possible, of the figures of the peace effective of all the Powers, excepting colonial troops.

“3. Maintenance for a like term of five years of the amount of the military budgets at present in force.”

When the subject came on for discussion in the Commission appointed to deal with it in 1899 the German military delegate stated his view that the question of effectives could not be discussed by itself, as there were many others to which it was in some measure subordinated, such, for instance, as the length of service, the number of *cadres*, whether existing in peace or made ready for war, the amount of training received by reserves, the situation of the country itself, its railway system, and the number and position of its fortresses. In a modern army all these questions went together, and national defence included them all.

This did not seem an unreasonable objection and, in any case, this statement of the difficulty was not refuted.

In June, 1906, the Italian Minister of Foreign Affairs (then M. Tittoni) made a statement which was characteristic of the then condescending “non possumus” continental attitude towards the subject. It was as follows:

“I, as Minister of Foreign Affairs of Italy, now publicly express the adhesion of the Government to the humanitarian ideas which have met with

such enthusiasm in the historic House of Parliament at Westminster. I have always believed that, as far as we are concerned, it would be a national crime to weaken our armaments while we are surrounded by strongly armed European nations who look upon the improvement of armaments as a guarantee of peace. Nevertheless I should consider it a crime against humanity not to coöperate sincerely in an initiative having for object a simultaneous reduction of armaments of the great Powers. Italian practice has always aimed at the maintenance of peace. Therefore, I am happy to be able to say that our delegates at the coming Hague Conference will be instructed to further the English initiative."

Between the two Hague Conferences at which attempts were made to deal with the subject an actual trial of reduction was effected in the American continent in a Disarmament Agreement (May 28, 1902) between the Chilean and Argentine republics. This agreement, which was due to the initiative and good offices of the British Government, provided that "in order to remove all cause of fear and distrust between the two countries," the governments in question "agree not to take possession of the warships which they are having built, and also for the present not to make any other acquisitions." The two governments furthermore agreed to "reduce their respective fleets, according to an arrangement establishing a reasonable proportion between the two fleets."

The two governments also respectively promised not to increase their maritime armaments during five years unless the one who wished to increase them gave the other eighteen months' notice in advance.

Are these the kind of guarantees the President proposes?

Or does he mean that there should be an International Commission which would have the power to examine into our respective national concerns and tell us what reductions we have to make to comply with the contractual scheme of reduction agreed to? If so, my imagination does not rise to realisation of the amount of obedience such a Commission is likely to receive.

In short I am afraid "adequate guarantees" are in the nature of a pious wish and yet the President's inclusion of the reduction of armaments among the main issues which arise out of the war is unquestionably right.

There are forces which make for war which seem beyond the control of the more intelligent part of the population of even the most progressive and experienced parliamentarily governed countries. Thus twenty years ago war between England and France hung in the balance. Ardent patriots among the French clamoured for the blood of the Englishman to wipe out the humiliation of Fashoda, and proposed a crusade to free South Africa and the Irish people from the tyrant's yoke. Ardent English patriots on their side professed their indif-

ference for the feelings of a degenerate people who did not rise against military oppression and release the innocent Dreyfus.

Against such dangerous manifestations of aggressive patriotism which, whether sincere or not, caused great unrest and forced governments into otherwise unjustifiable increases of expenditure on armaments, statesmen strove to react in vain, and if a reaction did come eventually it was not due to governments but rather in defiance of them and achieved under a running fire of discouragement and ridicule from the minority of ardent patriots on whom governments too often seem to lean for support.

Shortly before the outbreak of the recent War revelations were made which showed how powerful, coöperative and centralised were the interests of the great private arsenals and manufacturers of material of war of all kinds and how closely interwoven and international they were.

Where powerful and wealthy interests are concerned, it is not a far cry to say public opinion is exposed to being influenced by them without conscious knowledge of the methods employed.

Is not the immense power which these huge interests can wield in the promotion of orders for armaments in itself a possible danger to peace?

If this is so, statification of all armament industries is perhaps the one effective method of restricting armaments, that is, by keeping them under control. The present situation lends itself to the

realisation of such a reform both nationally and internationally.

Perhaps it is just an agreement to take some such steps that the President means when he speaks of "adequate guarantees."

But above all these factitious aids to evolution is the process of evolution itself. The World's War may have killed for the time being the disease of militarism from which the world was suffering before it reached its climax in the criminal act of August, 1914. The world has now seen what the thrill of war means as compared with the dullest time of peace. For years hence the peoples of the earth will be paying the price of armaments and the most powerful interests will have difficulties in rousing peoples for a long time to see in "preparedness for war" a method of peace or a way out of the annual financial difficulties our governments will all have to face till peoples have again forgotten what war means.

NOTE TO CHAPTER IX

SUGGESTED CLAUSES RESPECTING NATIONALISATION OF PRODUCTION OF MATERIAL OF WAR

Whereas it is obvious that the existence of large war industries dependent for their prosperity and even existence on the obtaining of orders for the supply of war ships, artillery, small arms, ammunition, that is to say, of articles which can be used for no other purpose than the prosecution of war, implies an interest which profits by the apprehension of war and loses by international arrangements which would entail any slackening of the demand for such material of war; and

Whereas these interests, like all great industrial interests naturally and in self-protection gravitate to understandings which are in direct opposition to movements for the preservation and assurance of peace;

It is in the joint interest of national finance and international peace that henceforward all production of articles of no use except for purposes of war shall be State monopolies, a fair indemnity to be paid to present owners in which any exceptional rate of profit made during the present war or in preparation for it shall be debited in reduction of the gross amount payable.

CHAPTER X

THE LAW OF NATIONS

THE protective law of war, the law which secures as far as possible the rights of neutral countries and subjects from the consequences of warfare and which by sympathetic extension asserts the rights of innocent noncombatants against its barbarities, is the creation of neutrals. The contradiction between the contentions of belligerents and neutrals is only one of standpoints and the indignation of the latter is an emanation of their interest, as such, to be unaffected by hostilities to which they are not a party.

Where there is no neutral powerful enough to insist on the neutral standpoint, it remains merely doctrinal and this is what happened in the recent War.

Thus, for instance, so far from the facts of the War having shown that the doctrine of immunity of private property from capture in maritime war needed adoption, they seem to have shown the contrary; it has been made clear that war in certain cases can only be brought to an end by economic isolation. Four years of military operations only brought out their futility; it was the silent block-

ade which stifled the enemy's trade and industry and starved him to the brink of death that turned the scale.

On the other hand, it was the submarine warfare that brought the Allies nearest to defeat. While the navy by its constant and unfailing vigilance never allowed an enemy ship to cross the open sea, the enemy submarines with corresponding persistency kept up the same strain of impending hunger and anxiety lest food and other supplies to the Allies should become reduced beyond the rate of repair.

On both sides the determining factors in the ultimate result have been economic and the fate of the War on land has been dependent on the power of the belligerents' respective naval forces to capture or destroy private property and their respective domestic ability to repair loss. The War has shown that, in such a war, warfare obeys no rules but those of expediency. It has been, as events have proved, truly a death struggle. All arms were resorted to and all the barbarities of past ages have been revived because it has been a death struggle similar to the racial death struggles of earlier ages. There has been no moderating neutral influence to watch over the interests of non-parties or of humanity.

The exceptional character of the War warrants the conclusion that though the doctrines of the international law of war have been more or less ignored during the recent War, this is only because practically the whole world was in a state of bel-

ligerency. When the neutral influence is able once more to make itself felt the more familiar conditions will be revived, and just as there is no reason to suppose the Congress of Peace will be able to do more than its predecessors in the settlement of the world to the satisfaction of all the High Contracting Parties, some of such parties may profit by the experience of recent events and seek to avoid entangling alliances capable of dragging them out of their comparatively safe and potentially strong position as neutrals.

Organisation and disintegration in the history of mankind follow each other with the fatality of a law of nature. The stages from the conquest of liberty to dictatorship as a rescue from licence are among the recurring facts of historical evolution. The wisdom of the leader is soon swamped in the struggle for leadership as we have seen whenever democracy produces a political class among a free people.

Law is the one stable element in the life of communities. Even bad law is better than disrespect for it, because the alternative for bad law is not necessarily good law and the stability of law is the common basis of all social and commercial intercourse. To labour anything so obvious is supererogation and I need only add that what is true of the domestic intercourse of nations can only be true of intercourse between nations. To say that International Law is dead is, therefore, about as true as to say that an inundation or an earthquake puts

an end to engineering and architecture. Far from it, the need of a law binding on nations and which nations will respect and may even be forced to respect is inherent to the idea of that Society of Nations to which the peoples of the world are looking forward as a safeguard against lawless ambitions, whether of potentates, statesmen, bureaucracies, oligarchies or democracies.

The work of the Hague Peace Conference will necessarily form part of the special work which the creation of a Society of Nations will entail.

After two great wars in the last century there was active and effective agitation in favour of further development of the Law of Nations. The Italian war of liberation led to the Geneva Convention and the Red Cross movement, that of 1870 to the foundation of the Institute of International Law and the Society for the Reform and Codification of the Law of Nations (now called the International Law Association), and eventually to the Hague conferences. The reaction in the case of the recent War is towards sanctions for the enforcement of the Law of Nations and hence to the conception of a Society of Nations capable of enforcing respect for it.

Fiat juris regnum in terris.

NOTES TO CHAPTER X

NOTE ON PREAMBLES TO DIFFERENT INTERNATIONAL CONVENTIONS RELATING TO WAR AND PEACE

The following preambles to international conventions may be considered as having definitely determined certain principles to be beyond the scope of controversy. It is important to group them as declarations of moral law and conduct agreed to by the different States which ratified the conventions in question.

War

1. Geneva Convention of 1864: the Powers were animated by "the desire within the measure of their ability of mitigating the evils inseparable from war, of suppressing its useless hardships and of ameliorating the condition of wounded soldiers on the field of battle."

In the new Geneva Convention of 1906, the Powers repeat that they are "equally animated by the desire of mitigating, as far as possible, the evils inseparable from war" and desire, with this end in view, to improve and to complete the arrangement agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of wounded or sick soldiers in armies in the field.

The first provision of the Convention carrying out the object of the above preamble states that "officers and soldiers and other persons officially attached to armies"

shall be taken care of as prisoners of war "without distinction of nationality." After each engagement the commander in possession of the field is to take measures to search for the wounded and prevent any maltreatment or pillage.

2. The Convention of 1899-1907, for the Adaption to Maritime Warfare of the Principles of the Geneva Convention relates that the Powers are "alike animated by the desire to diminish, as far as depends on them, the evils inseparable from warfare", and that they wish "with this object to adapt to maritime warfare, the principles of the Geneva Convention."

3. The Declaration of St. Petersburg (1868) sets out that an International Military Commission "assembled at St. Petersburg in order to examine into the expediency of forbidding the use of certain projectiles in times of war between civilized nations" and by common agreement "fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity", that the governments represented considered "that the progress of civilisation should have the effect of alleviating as much as possible the calamities of war";

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;

"That for this purpose it is sufficient to disable the greatest possible number of men;

"That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable; and

"That the employment of such arms would, therefore, be contrary to the laws of humanity."

4. All the declarations of 1899 in their preambles are stated to be inspired by the sentiments which found

expression in the Declaration of St. Petersburg of 1868 forbidding the employment of explosive projectiles of a weight inferior to 400 grammes.

The Powers represented at these different conferences have, therefore, declared that on a level with the use of explosive bullets are the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions; of projectiles which diffuse asphyxiating or deleterious gases; and the discharging of projectiles and explosives from balloons or by other new methods of a similar nature.

5. The Powers, say the Convention with Respect to the Laws and Usage of War on Land, in drawing it up were "animated by the desire to serve the interests of humanity and the ever-increasing requirements of civilisation"; they thought it important "with this object to revise the laws and general customs of war, either with the view of defining them more precisely, or of laying down certain limits for the purpose of modifying their severity as far as possible."

"The provisions," it says, "have been inspired by the desire to diminish the evils of war so far as military necessities permit" and are destined to serve as general rules of conduct for belligerents in their relations with each other and with populations.

Though it had not been possible to agree forthwith on provisions embracing all the circumstances which occurred in practice, it was "not intended by the High Contracting Parties that the cases not provided for should, for want of a written provision be left to the arbitrary judgment of the military Commanders"; "and until a more complete Code of the laws of the war was issued, the High Contracting Parties thought it right" to declare that

in cases not included in the regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international laws as they result from the usages established between civilised nations, from the laws of humanity, and the requirements of the public conscience.

And Article 3 of the Convention by way of further emphasis states that "the belligerent Party who violates the provisions of the said Regulations shall be bound, if the case arises, to pay an indemnity", and that "it is responsible for all acts done by persons forming part of its armed force."

6. In the same way the Convention relating to Bombardment by Naval Forces in time of War states that the Powers considered that it was of "importance to subject bombardment by naval forces to general provisions guaranteeing the rights of inhabitants and insuring the preservation of the principal buildings, by extending to this operation of war, as far as possible, the principles of the regulations of 1899 with respect to the laws and customs of war on land" and that they were "inspired by the desire to serve the interests of humanity and to lessen the rigours and disasters of war."

7. Lastly as regards the Employment of Submarine Mines acting automatically by Contact, the Convention on the subject upholds "the principle of the freedom of sea routes open to all nations" and declares that "if, in the present state of things, the use of submarine mines with automatic contact cannot be forbidden, it is important to limit and regulate their use, in order to restrict the rigours of war and to give, as far as possible, to peaceful navigation the security it has the right to claim, in spite of the existence of a war."

Peace

Hague Convention for the Pacific Settlement of International Disputes

(The passages in italics are additions and alterations made by the Convention of 1907.)

"Animated by a strong desire to concert for the maintenance of general peace;

"Resolved to second by their best efforts the friendly settlement of international disputes;

"Recognising the solidarity which unites the members of the society of civilised nations;

"Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

"Convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

"Having regard to the advantages attending the general and regular organisation of arbitral procedure;

"Sharing the opinion of the august Initiator of the International Peace Conference that it is expedient to record in an International agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

"Desirous for this purpose of better assuring the practical working of Commissions of Inquiry and Courts of Arbitration and to facilitate recourse to arbitration when matters in variance are concerned which can be dealt with by a summary procedure;

"Have thought it necessary to revise on certain points and to complete the work of the first Peace Conference for the pacific settlement of international disputes."

Neutral Rights**Convention Relative to the Establishment of an International Prize Court (1907)**

"Animated by the desire to settle in an equitable manner differences which arise from time to time in maritime warfare, in connection with decisions of national Prize Courts;

"Holding, that if such Courts are to continue to give decisions in accordance with the forms prescribed by their legislation, it is important that, in certain cases, recourse be provided under conditions harmonising, as far as possible, with the public and private interests involved in all Prize cases;

"Considering, on the other hand, that the formation of an international Court with a carefully regulated competence and procedure seems the best means of attaining this object;

"Being, moreover, convinced that in this manner the rigorous consequences of a maritime war may be attenuated: that, in particular, good relations between belligerents and neutrals are more likely to be maintained, and, in consequence, the preservation of peace better assured". . . .

**MEMORANDUM OF A SCHEME FOR THE PROMOTION OF
LAW AND JUSTICE AMONG NATIONS BY EDUCATION**

The weakness of all the schemes which have hitherto been propounded for the promotion of the spirit of law and justice among civilized mankind generally has been that they assumed mankind generally to be ready to receive enlightenment. That this is not the case is shown by the almost universal adoption of compulsion

for the spread of education and by the practical failure of all propagandas which are not founded on the very simplest of issues.

On the other hand, it is a matter of almost universal experience that ideas absorbed in youth while the mind is still fresh and therefore receptive are far more tenacious than impressions obtained in later years when the brain tissue, like the rest of the physical being, has begun to harden.

Ideas acquired in youth partake in fact of the character of faith. They remain throughout life, like faith. The deeper furrows of mental tendency and the thinner after-impressions due to reason have little chance of obliterating these stronger lines which become the convictions of almost every life.

If, in particular, Peace advocacy *per se* has made but little progress, it is mainly due to its having been addressed to men's maturer reason which unfortunately is just as unstable as faith imbibed at an early age is firm.

Just as the Churches seek to implant conviction in the young and creeds are taught to children long before they have reached the age of understanding, with the result that even the greatest minds seldom succeed completely in their efforts at self-emancipation, so may we not hope that if a basis of international amity and mutual respect and consideration could be implanted in the minds of the rising generations of those who are destined to voice the political and international life of peoples, it would have a similar effect? Might it not forward the growth of that faith in upright, humane and considerate conduct among nations, the absence of which is now being shown to be the chief cause of the deplorable break-up with which civilisation is at present threatened?

That the best laid schemes may fail through the inter-

vention of the unforeseen, that faults of character, a bad choice of instruments, external jealousies and rivalries and many other disturbing elements due to our faulty human nature may interfere with their successful realisation, is a consideration inherent to all human effort. This, however, may be said of the scheme I have outlined in the following suggestions, that whether its effect should be wholly as beneficial as I believe it would be or not, it could not be without any effect at all in determining a current of international understanding. Even if the effect were only small, the effort would not be entirely lost. It might, moreover, be the starting-point of other efforts in the same sense. My own conviction is that the emancipation of mankind from the present tendency to regard as justifiable in international relations most of the misconduct we strive to banish from our citizen life can only be achieved by creation of a new faith among mankind and all analogies point to this being achievable by influence exercised over young minds at their impressionable age.

1. The purpose to be fulfilled

The purpose to be fulfilled is the education of public opinion in :

- (a) The utility of law and order in international relations;
- (b) The futility as a solution of international problems of war which at the best only substitutes new for older problems;
- (c) The advantages to the masses of mankind of a progressive international morality;
- (d) The sanctity of international engagements as a basis of such morality;

(e) The desirability of employing peaceful methods of diplomacy, mediation, arbitration and the Hague Court and appreciation of their respective potentialities.

2. Points for consideration in the attainment thereof

(a) The most effective channel for influencing public opinion is the teaching of those whose minds are still in a receptive condition ;

(b) To give direction to the forces which form public opinion, it is necessary to operate on the intellectual, professional, commercial and industrial classes simultaneously.

(c) The intellectual, professional and so-called upper classes have always been influenced by the training of the higher schools.

(d) The commercial and industrial or so-called middle and lower classes are entitled to obtain knowledge and intellectual training (as in Scotland and America) unaffected by questions of leisure and means.

3. To effect the above purpose

(e) Eight Chairs of International Law might be created in connection with the Universities of London, Paris, Berlin, Vienna, Rome, Petrograd, New York and Tokio.

(f) Tenants of these Chairs to be chosen for qualification from among members of the Institute of International Law, and

(g) Such tenants to undertake before appointment to regard their mission as purely international, cosmopolitan and independent. Acceptance of any public appointment during tenure of the Chair or of any office which might curtail the freedom of their opinions to be equivalent to resignation.

(h) Tenants of the Chairs to meet at regular intervals as an academic committee to discuss matters of interest in the prosecution of the purpose for which the Chairs have been created.

(i) The Chairs to be placed under the High Patronage of (say) the Pope, the President of the United States and the President of the Swiss Confederation.

(j) A meeting to be held (say) once every year under the presidency of one of the above patrons alternately at which the tenants of the Chairs should render an account of their stewardship and to which such persons should be invited as the patron in question may determine.

(k) The first tenants of the Chairs to be appointed by (say) the Committee of the "Carnegie Endowment for International Peace" or other constituent authority or authorities. Thereafter appointments to be made by the said Carnegie Endowment and (or) authorities on presentation by the governing bodies of the universities in question.

Tenure of the Professorships to be for ten years; holders to be re-eligible.

(l) The foundation in each case to be more or less in proportion to the needs of the respective cities; for London, Paris, Berlin and New York, to be (say) \$500,000 each and in the case of Vienna, Rome, Petrograd and Tokio (say) \$400,000 each, making a total of (say) three and a half million dollars.

4. To effect the purpose of the Chairs, the Professors to bear in mind that they must seek

To promote the study of International Law and Usage as a branch of knowledge in statecraft among:

(a) Those who contemplate entering public life;

- (b) Those who are qualifying for entry into the diplomatic or consular services;
- (c) Publicists and journalists;
- (d) Students of law;
- (e) Students of the subject for its own sake.

5. Mode of work. Nonacademic lectures

The tenants of the Chairs to deliver a series of (say) six public lectures a year open to all persons free of charge who apply for a ticket; these lectures to be of a popular character explaining the methods of operation of intercourse among nations, the working of diplomatic and consular relations, the conclusion and effect of treaties, the origin and advantage of law and order among the community of States, the growth and grouping of States; the part played by racial and linguistic homogeneity in state development and the capabilities of statecraft and its organs in the promotion of good understanding among peoples generally.

Academic work

The tenants of the Chairs to take charge of three simultaneous classes in which the work would be graduated.

First year's class. The students should be conducted through the elements of International Law in such a way as the tenant of the chair may deem best adapted to the enlargement of their understanding of the subject. In this class, an adequate portion of the time should be devoted to the origin and history of International Law.

The object of this class would be purely the acquisition of knowledge.

Second year's class. This should be devoted to the examination of the problems of International Law and

Usage, students in turn under the chairmanship of the Professor to deal with matters selected by the Professor, other students to take part in the discussion; the matters to be selected in advance by the Professor to enable the members of the class as far as possible to mature their views on the subject.

The object of this class would be to deal with the practical application of law and usage among nations.

Third year's class. This should be devoted to the language of diplomacy, the drafting of memoranda on current events, condensing reports, the art of statement in memoranda, verbal notes, etc., the preparation of treaties and other diplomatic engagements and undertakings and their interpretation, the art and methods of diplomacy and negotiation, the study of the official books of the different States, the utilisation of books of reference, the methods of government and foreign policies of different States, commercial politics, treaties of commerce, tariff systems, colonial doctrines, exterritoriality, comparative and historical geography and cartography.

Professors' assistants. As the above scheme of work implies more than any man could manage, the Professor to be entitled to employ assistants as lecturers and teachers to aid him in such parts of his work as he may in his discretion appoint.

CHAPTER XI

NEUTRALISATION

BEFORE dealing with neutralisation, we must be clear about the meaning and varieties of meaning of the word "neutrality", from which, owing to imperfection of terminology, the sense of the term has not been sufficiently distinguished.

Mr. Kleen, an eminent Swedish writer, member of the Institute of International Law, whose book in two volumes on neutrality is the most complete work on the subject ever written, finds in practice a number of distinctions. First of all there is neutrality purely and simply which he defines as "celle qui appartient et s'impose en vertu du droit international à tout État qui pendant une guerre, veut rester en dehors des hostilités."¹ He then finds a *conventional* neutrality which he defines as "celle qui, par suite d'une situation particulière ou exceptionnelle, accommode la neutralité simple et ordinaire à certains cas ou aux circonstances, en la soumettant à des conditions ou bien en augmentant ou en diminuant sa portée."² This conventional neutrality again may be perfect, that is

¹ Kleen, "Lois et usages de la neutralité," I, p. 81.

² *Ibid.*, I, p. 83.

to say in the legal sense, strict, when it is "appliquée entièrement comme le prescrit le droit international quant aux droits et devoirs réciproques",¹ or it may also be *free* if "elle dépend de la volonté et du jugement de l'État neutre lui-même, et si elle peut être abandonnée par lui quand bon lui semble, lorsqu'il trouve que son droit et son intérêt l'obligent à prendre les armes."² On the other hand, conventional neutrality may be *obligatory* in the case where "un État s'engage par convention avec un ou plusieurs autres États à l'observer ou à la maintenir, soit en général et pour tous les cas de guerre soit pour un cas spécial ou en vue d'une certaine ou de certaines guerres."³ Neutrality in the special case mentioned in the latter part of this quotation is termed by Mr. Kleen "neutralité accidentelle." He gives its definition as follows: "La neutralité accidentelle est celle par laquelle un État s'engage par convention envers un ou plusieurs autres États à rester neutre pendant une ou plusieurs guerres déterminées. L'acte conventionnel peut être conclu, ou d'avance, dans la supposition de telle éventualité de guerre, ou lors de celle-ci."⁴ The conventional neutrality which is imperfect or limited, "la prétendue neutralité dite imparfaite ou limitée et qui comporterait une somme moins grande de devoirs à remplir, soit pour les neutres, soit pour les belligérents", he declares "nulle."⁵ Mr. Kleen, however, finds still another

¹ Kleen, "Lois et usages de la neutralité", I, p. 109.

² *Ibid.*, I, p. 84.

³ *Ibid.*, I, p. 84.

⁴ *Ibid.*, I, p. 102.

⁵ *Ibid.*, I, p. 109.

conventional neutrality which is partial, viz. : "lorsqu'elle n'embrasse qu'une ou plusieurs parties du territoire de l'État."¹ With this he contrasts "general conventional neutrality", i.e. "celle qui embrasse tout le territoire de l'État."² And this brings us back to the definition of neutrality itself as to which he says : "La neutralité est la situation juridique dans laquelle un État pacifique est, autant que possible, laissé en dehors des hostilités qui ont lieu entre des États belligérents, et s'abstient lui-même de toute participation ou ingérence dans leur différend, en observant vis-à-vis d'eux une stricte impartialité."³

Distinct from all these forms of neutrality, qualified and absolute, is *conventional permanent or perpetual neutrality* which he defines as follows : "celle par laquelle un État — ordinairement contre des garanties d'inviolabilité pour sa neutralité — s'oblige une fois pour toutes envers d'autres États à rester neutre en général et pendant toutes les guerres."⁴

This is the neutrality which results from the status of "neutralisation."

A neutral nation in time of war is merely one which does not take part in it. Its nonbelligerent position entails certain rights and obligations which are known as the law relating to neutrals. Holland, for instance, which is not neutralized like Belgium, was nevertheless neutral and the Hague conventions apply without distinction to both. The oper-

¹ Kleen, "Lois et usages de la neutralité", I, p. 103.

² *Ibid.*, I, p. 103.

³ *Ibid.*, I, p. 73.

⁴ *Ibid.*, I, p. 85.

ation of neutralisation is not confined to time of war. It places the neutralised State or area, as it were, in trust. It implies a relationship among the grantors or guarantors which, within the scope of the originating agreement, is a curtailment of the freedom of action of its governing authority.

Of neutralisation in contemporary practice we have six examples, viz. : those of Belgium, Switzerland, Luxemburg, the Congo Territories, an area of French Savoy and the Ionian Islands.

As regards Belgium, her neutrality was first assured by a treaty dated November 15, 1831, and reaffirmed in another dated August 30, 1839. The signatories were Great Britain, France, Austria, Prussia, Russia and Holland. Article 7 of this treaty provided : "Belgium shall form an independent and perpetually neutral State. It shall be bound to observe such neutrality towards all other States."

That of Luxemburg resulted from a treaty concluded on May 11, 1867, between Great Britain, France, Austria, Belgium, Italy, the Netherlands, Prussia and Russia, which declared the Grand Duchy of Luxemburg a "perpetually neutral State," the High Contracting Parties undertaking to respect its neutrality and, with the exception of Belgium (itself a neutral State), placing it under their "collective guarantee."

Switzerland owed her neutrality to a Declaration dated March 20, 1815, signed by eight Powers, viz. : Great Britain, France, Russia, Prussia, Austria, Spain, Portugal, and Sweden and Norway, which

guaranteed her perpetual neutralisation. By a decision of the Swiss Confederation, dated May 27, 1815, this neutralisation was accepted, and on November 20, 1815, it was reaffirmed by a fresh declaration on the part of Great Britain, France, Russia, Prussia and Austria.

There is a difference in form between the neutralisation of Belgium and that of Luxemburg and Switzerland. In the case of Belgium, there is no specific guarantee of neutralisation by the Powers, as there is in the treaties insuring it for the two other States, but as the articles agreed to, including the one quoted above, were "placed under the guarantee" of the said Powers, the effect is the same in so far as the rights and obligation of perpetual neutrality are concerned.

The legal position of the neutralised area of the Congo Basin is quite different. This basin comprises all the regions watered by the Congo and its affluents, including Lake Tanganyika and its eastern tributaries. It is a vast region of Central Africa affecting French, Portuguese, British and German dominions as well as the whole Congo State, now a Belgian dependency. By the General Act of Berlin of 1885, the High Contracting Parties bind themselves to respect the neutrality of the territories or portions of territory belonging to the States concerned so long as the Powers exercising the rights of sovereignty or protectorate over these territories shall fulfil the duties which neutrality requires. But in a letter from Sir E. Malet to Earl Granville, respecting the nature of this condition,

it was stated that though the British Government had been "anxious to extend the benefit of neutrality as widely as should be found practicable", it had been absolutely necessary to insist on such provisions as would secure that "if parts of the territory of a belligerent were to be respected as enjoying immunity from hostilities, they should in no sense and in no degree be capable of serving as a base of operations for the forces of such belligerent." As France and Portugal considered this to be inconsistent with their sovereign rights, it was agreed that the signatory Powers should use their good offices in case of a war in which one or more of the belligerents should hold territory in the free basin, to obtain the neutralisation of such territory during the war by special agreement. As regarded the newly formed free State of the Congo, added Sir E. Malet, "the engagement to respect its territory does not involve a guarantee but it only entails a moral obligation."

It is seen that neutralisation, like neutrality, involves distinctions. In the case of the Congo Basin, to take the least definite form, there is merely an obligation arising from the power to claim it.

In the case of Luxemburg, the neutralisation is not only absolute but its preservation is dependent entirely and unrestrictedly on the good faith of the Powers creating it, the Treaty of 1867 providing that, being neutralised, "the maintenance or establishment of fortifications on its territory becomes without aim or object." This treaty further

provided that the town of Luxemburg should cease to be a fortified place and that any troops provided by the sovereign should be restricted to requirements for the preservation of order. As regards Switzerland and Belgium, no such stipulation was imposed and, alongside the guarantee, in the one case of the neutralisation and, in the other, of the stipulations contained in the treaty creating the neutralisation they were left to provide such fortifications and defences as in their discretion they might deem desirable.¹

Differing from neutralisation but having a purpose of more or less the same character are buffer zones, that is to say, strips of territory on either side of a frontier which the respective States agree to regard as in a sense neutralised. On the zone the parties may undertake to erect no fortifications and to maintain no armed forces but those necessary to enforce obedience to the law. Such zones, it is seen, are not neutralised in the sense of being

¹ The case of Savoy is anomalous and does not fall within the scope of the present volume.

The case of the Ionian Islands has given rise to no examination of the character of the neutrality conferred on them by the treaties of 1863 and 1864. That of July 12, 1863, did not go beyond laying down the principle that the Ionian Islands should be attached to Greece. The Contracting Powers a few months later first placed all the islands under the régime of neutrality and then confined the neutrality to the islands of Corfu and Paxo only. By the Treaty of March 20, 1864, France, Great Britain and Russia, in their capacity of Guaranteeing Powers, declared with the assent of Austria and Prussia that the islands of Corfu and Paxo with their dependencies, after being united with the Hellenic Kingdom, should enjoy perpetual neutrality, the King of the Hellenes undertaking to preserve such neutrality.

recognised as such by any third Power and in the event of war between the States concerned, the arrangement between the parties would cease to be operative. There have been many instances of buffer zones¹ in the course of history. The most recent of them, established by agreement between Sweden and Norway in 1905, is a zone of fifteen kilometres on either side of their frontier within which all existing fortresses were to be dismantled and no new ones to be erected and no armed troops to be maintained.

The principle of neutralisation is still one of the most promising of modern political developments for restriction of geographical areas exposed to the calamities of war. If one aggressive State broke its promise, other States respected theirs, at any rate as regards Belgium and, on the whole, the *de facto* situation is favourable to reliance on good faith being observed where the terms of a treaty leave no room for equivocation. With the interdiction of secret treaties and the control of foreign policy by the respective parliaments of the High Contracting Parties to the coming settlement, international affairs may be brought into line with the ordinary straightforward rules of conduct by which honest private citizens consider themselves bound, and neutralisation by treaty or proclamation may become one of the different processes of law by which war may eventually become as obsolete as duelling.

¹ See special note on Buffer Zones, pp. 222-224.

NOTES TO CHAPTER XI

SUGGESTED FORM OF AGREEMENT AS TO PROCLAMATIONS OF NEUTRALISATION¹

Considering that Article 10 of the General Act of Berlin of February 26, 1885, provides that:

"In order to give a new guarantee of security to trade and industry, and to encourage by the maintenance of peace the development of civilisation in the countries mentioned in Article I,² and placed under the free-trade system, the High Signatory Parties to the present Act, and those who shall hereafter adopt it, bind themselves to respect the neutrality of the territories or portions of territories, belonging to the said countries, comprising

¹ From Sir T. Barclay's "Problems of International Practice and Diplomacy." London and Boston, 1907. See also by same author, "International Law and Practice for Comparison of Conventions of 1899 with Those of 1907."

² This Article extends the application of the free-trade declaration to all the territories forming the basin of the Congo and its tributaries. It adds a zone eastwards of the Congo Basin to the Indian Ocean, and concludes as follows: "It is agreed that, in extending the principle of free trade to this eastern zone, the Powers represented at the Conference only enter into an undertaking for themselves, and that this principle does not apply to territory belonging at present to any independent and sovereign State without its consent. The Powers undertake to employ their good offices with the Governments established on the African shore of the Indian Ocean with a view to obtaining their consent thereto, and, in any case, to assure the most favourable conditions of transit for all nations."

therein the territorial waters, so long as the Powers which exercise or shall exercise the rights of Sovereignty or Protectorate over those territories, *using their option of proclaiming themselves neutral*, shall fulfil the duties which neutrality requires.”

But that no provision has been made for the mode in which notice of such a proclamation of neutralisation shall be given;¹

And whereas the said General Act provides that difficulties arising in connection with the territories dealt with under it shall, before any appeal to arms, be submitted to mediation or arbitration;²

And considering that Article 11 provides that —

“In case a Power exercising rights of Sovereignty or Protectorate in the countries mentioned in Article I., and placed under the free-trade system, should be involved in a war, then the High Signatory Parties to the present Act, and those who shall hereafter adopt it, bind themselves to lend their good offices in order that the territories belonging to this Power and comprised in the conventional free-trade zone shall, by the common consent of this Power and of the other belligerent or belligerents, be placed during the war under the rule of neutrality, and considered as belonging to a nonbelligerent State, the belligerents thenceforth abstaining from extending hostilities to the territories thus neutralised, and from using them as a basis for warlike operations.”

¹ The provision made for notice in case of occupation is as follows: “Any Power which shall henceforth take possession of any territory on the shores of the African Continent, situate outside its present possessions, or which, until now, having none, shall come to acquire any such possessions, and any Power which shall assume a protectorate, shall accompany the document relating thereto by a notification addressed to the other Powers, signatories to the present Act, in order to enable them, if need be, to make good any claims” (Article 34).

² Article 12.

And whereas there is no reason why, subject to the same principles and conditions, such neutralisation should not be made applicable to other non-European (European?) regions;

It is hereby agreed, etc., as follows:

1. Upon notice being given to the *International Bureau*¹ at The Hague that any High Contracting Party has placed any territory under the *régime* of strict permanent neutrality, the said Bureau shall notify all the other High Contracting Parties accordingly. If within three months after receipt of such notification, no objection should be raised by any H. C. P., such permanent neutrality shall be considered as proclaimed.

2. The conditions upon which permanent neutrality shall be enjoyed are as follows:

(a) That on the neutral territory there shall, at no time, be raised any fortifications, and that there shall be kept up in connection with it no armed ships or forces beyond such as may be necessary for the preservation of public order;

(b) That the rules of neutrality as set out in draft No. 9 shall be strictly observed;

(c) That all international difficulties, without any exception whatsoever, shall be deemed *ipso facto* within the jurisdiction of The Hague Court, the Umpire, in case of disagreement as to his selection, to be appointed by the President of the Swiss Confederation, and in case Switzerland should be a party, or the President should refuse to act, by the King of the Belgians.

3. The High Contracting Parties solemnly undertake to respect any neutralisation thus proclaimed and observed. Any breach thereof shall be submitted to The Hague Court in accordance with the provisions of § (c) of Article 2 hereof.

¹See Article 22 of "The Hague Peace Convention."

NOTE ON SOME GERMAN THEORIES RESPECTING NEUTRALISATION AND ITS GUARANTEES

A theory was propounded by German writers in the course of the late War that a guarantee of neutralisation is the same as a guarantee of integrity and that Belgium was not bound to resist the invasion of German troops under the treaty imposing neutralisation, that Germany in undertaking to respect her integrity and defray all the expenses and loss incurred by crossing her territory would still have been observing the conditions of her guarantee. This, however, is not the view of her best known and most influential writer on International Law, Professor Von Liszt, of the University of Berlin, who has treated the whole subject in a totally different sense in his book: "Das Völkerrecht" (9th edition) published in 1913. I translate the chief passages of his pronouncement on the subject:

"Permanent neutrality," he says, "in the first place, is binding on the neutralised State, inasmuch as it is not only forbidden to carry on any war, except one in defence of its territory, but also, not, in peace time, to conclude any Treaty which may bind it to carry on war. . . . Permanent neutralisation, moreover, is binding upon other States not only those which have stipulated the neutralisation but also those which either expressly or even only tacitly have given their consent to it. Violation of such neutralisation by belligerents, therefore, constitutes an international delict and entitles the Powers to take steps against the offender. But more particularly does the neutralisation bind the guaranteeing Powers, that is to say those States which have bound themselves to uphold the integrity of the territory of the neutralised State, to defend it, if need be, with armed forces. If the

guarantee is a collective one, it binds the Powers, however, only to collective intervention, though each of them is entitled to unilateral intervention.

"Neutralisation by Treaty creates a juridical situation which can only be altered or determined by consent of the contracting States. Hence the neutralised State cannot terminate its neutralisation by its own declaration nor can any of the States which have stipulated the neutralisation retire voluntarily from its undertaking. Any accretions of territory, which include colonial acquisitions, on the part of the neutralised State, however, require the approval of other States and especially of the guaranteeing Powers. This follows from the principle of unity of State territory which excludes any distinction between neutralised and non-neutralised parts."¹

Professor Von Liszt, I may mention, was nevertheless one of the signatories of the manifesto of the "intellectuals" which stated that it was not true that Germany had criminally violated the neutrality of Belgium, because she had unquestionable proof that France and England had already made preparations to violate Belgian territory and that, on the part of the Fatherland, not to have been the first to do so would have been suicide. As no evidence whatsoever has been advanced in support of this statement except two reports found in the archives of the Foreign Office at Brussels after the invasion of Belgium, which do not bear out the allegation, the signatories must have been entirely misled by some false allegations submitted to them. I cannot suppose that an accomplished lawyer like Professor Von Liszt, that first-class business men like Herr Von Gwinner and Doctor Kaempf, that men trained in the exact sciences like Professors Ehrlich, Ostwald and Haeckel, that a mathema-

¹ Pages 60 *et seq.*

tician like Professor Foerster, that a historian like Professor Lamprecht, that a critical theologian like Professor Von Harnack, that men, in short, with great European reputations at stake should have subscribed such a statement without evidence sufficiently cogent to warrant their doing so. It is to be hoped that we shall some day know by what ignoble methods men of such scientific eminence can have been induced to make a statement of such precision. Professor Schiemann, to whose sagacity I have had occasion more than once elsewhere to refer,¹ was not misled. As he seems to have said ² the manifesto proved nothing and, therefore, could not possibly convince people who took a diametrically opposite view. If they were not misled by false allegations, it only shows that in time of war even the wisest of men revert to unreasoning combative instincts. I need not quote from less exhaustive examinations of the subject by other German publicists, but I may say that the views expressed by Professors Von Ullmann and Gareis in their treatises on International Law are practically the same.

Nor did official Germany contest the view that the neutralisation of Belgium forbade entry upon its territory. The German Chancellor, apart from the notorious incident of the "scrap of paper", stated in the Reichstag:

"We are in a state of legitimate defence, and necessity knows no law. Our troops have occupied Luxemburg and have perhaps already entered Belgium. This is contrary to the dictates of International Law. France

¹ See Barclay's "Thirty Years Anglo-French Reminiscences." London. Constable & Co., 1914.

² See "Enquête" of Mr. Ibanez de Ibero, *Echo de Paris*, March 29, 1915. Mr. De Ibero's articles have since been republished in book form.

has, it is true, declared at Brussels that she was prepared to respect the neutrality of Belgium so long as it was respected by her adversary. But we knew that France was ready to invade Belgium. France could wait; we could not. A French attack upon our flank in the region of the Lower Rhine might have been fatal. We were, therefore, compelled to ride roughshod over the legitimate protests of the Governments of Luxemburg and Belgium. For the wrong which we are thus doing, we will make reparation as soon as our military object is attained."

To this admission that the invasion was a violation of Germany's contractual obligations towards Belgium and her co-guarantors, the contention of later writers must yield. Moreover, it is in accordance, as we have seen, with the views of Germany's leading authorities on International Law.

Far, however, from facilitating an issue from the difficulties we have to face in determining the nature of neutralisation, the admission of deliberate illegality adds very seriously to the complication.

Neutralisation is solely dependent on honourable observance of the treaty obligations creating it. Even Treitschke, the apologist of all that is ruthless, selfish and uncompromising in international relations, has warned his countrymen, that, "a State must have a very highly-developed sense of honour, if it is not to be disloyal to its own nature. The State is not a violet blooming in the shade. . . . It must strain every nerve to preserve for itself that respect which it enjoys in the State-system."¹ We shall see below that elsewhere he qualifies this high-minded recommendation to the statesmen of the Fatherland.

¹ "The Political Thought of Heinrich von Treitschke", by H. W. C. Davis, p. 177. London, 1914.

There is no ground upon which a nation which breaks its bond is less unworthy than an individual who commits a breach of trust. International good faith is a primal interest for the whole community of nations. That engagements shall be respected is the groundwork of civilised intercourse. It is no mere theoretical or moral proposition to say that on the sanctity of treaties rests the whole fabric of international stability. On the strength of the confidence that States will respect their engagements, nations enter into contracts with each other without taking the precautions necessary where bad faith may be apprehended. The interchange of merchandise between the citizens of different States, the admission of ships to each other's ports and harbours, all the freedom of business between nations is guaranteed by treaties. Patents, trade-marks, designs, copyright are all the subject of treaties. Cables, telegraphs, telephones, postal services all interconnect the different countries of the world in virtue of treaties. In short, the whole intercourse, trade and navigation of the two hemispheres is subject to the fidelity with which States may be counted upon to respect their engagements. Cases there have been of States repudiating engagements, but until now these have never been among the great States and the result has been without exception disastrous for the delinquents.

In the case of Germany's repudiation of her engagements to Belgium, she appeals to the authority of her chief political historian, Treitschke, who, in spite of his own theory of national honour, qualifies the binding character of treaty engagements to such an extent that little of it remains:

"The relative importance of various obligations," he says, "must be quite different in the case of the State from what it is in the case of private individuals. A great

number of the duties incumbent upon private individuals could not possibly be held to be incumbent upon the State. The highest duty of the State is self-preservation. Self-preservation is for the State an absolute moral obligation. And, therefore, it must be made clear that of all political sins, that of weakness is the most heinous and despicable. . . . In private life there may be excuses for moral weakness. In the State there can be no question of any excuse. The State is Power, and if it is false to its own nature, no punishment can be too severe for it."¹

"Every State," he wrote elsewhere, "will for its own sake limit its sovereignty to a certain extent by means of treaties. When States conclude agreements with one another, they do to some extent restrict their powers. But this does not really alter the case, for every treaty is a voluntary self-limitation of an individual power, and all international treaties contain the tacit proviso: *rebus sic stantibus*. One State cannot hamper the exercise of its free will in the future by an obligation to another State. The State has no supreme judge placed above itself, and, therefore, it concludes all its treaties with that mental reservation. This is confirmed by the fact that . . . the moment war is declared all treaties between the belligerent nations are cancelled. Now every sovereign State has the unquestionable right to declare war when it so desires and, therefore, it is possible for every State to cancel its treaties."²

This is not a lawyer's view and in justice to German authorities of a more accurate and less polemical character, I translate the following passage on the same sub-

¹ "The Political Thought of Heinrich von Treitschke", by H. W. C. Davis, p. 167. London, 1914.

² *Ibid.*, pp. 162 *et seq.*

ject from the already quoted work on International Law of Professor Von Liszt :

"The statement that all international treaties are subject to the tacit clause *rebus sic stantibus*, that on alteration of circumstances they may be denounced, is unquestionably as a general proposition inaccurate; otherwise the very principles of international law would be negated. The course of historical events involves a continual variation of circumstances and contractual fidelity, without which no international law can subsist, would be within the discretion of the contracting States . . .

". . . Even treaties of indefinite duration . . . cannot be offhand cancelled by unilateral denunciation. . . .

"An exception is admissible only in so far as a treaty involves specific conditions, expressed or tacit, and in so far as, through the alteration of these conditions, the obligations undertaken have become essentially heavier. If a State has guaranteed the integrity of another State, the treaty of guarantee may be denounced if, through expansion of its territory, as for instance through the acquisition of an extended colonial area, the obligations of the guaranteeing State are sensibly increased. This would apply to tariff arrangements, if by the territorial expansion the new economic conditions altered essential conditions of the arrangements. Also constitutional changes as from a monarchical to a republican form of government, or vice versa, would warrant denunciation, if the treaty had been entered into in view of the continuance of some form of government.

"Apart from such exceptions, the principle *pacta sunt servanda*, which is the basis of all law, must be upheld."¹

International Law has only the binding character

¹ "Völkerrecht", pp. 170 *et seq.*

which States choose to accord it. Observance of its rules depends entirely on the voluntary respect with which the Great Powers treat them. A single State so powerful that it is beyond reach of the pressure of other States can set them at naught. Thus for generations attempts to modify international maritime law have been dependent on the coöperation of England as chief maritime State, without whose assent these attempts were necessarily abortive. So it is as regards International Law governing matters on land. Thus without the coöperation of Germany as the then greatest military Power, proposals for reduction of armaments, in spite of their having the support of practically all the other great Powers, were destined to failure and failed. The same consensus is necessary for the maintenance of existing rules and practice. A great Power which refuses to recognise the binding character of neutralisation negates its purpose. If the moral restraints of neutralisation by treaty can no longer be relied upon, the independence and integrity of smaller States generally will depend upon the overwhelming physical coöperation of guaranteeing States. The method originally planned for the protection of Holland and Belgium was the creation of a line of fortifications erected at the expense of the guaranteeing States. Neutralisation was a later substitute for this method. The recent War has shown that fortresses are powerless against sufficiently powerful artillery and we are thrown back on trenches and water as a means of self-defence and, as in antiquity, European frontiers, liable at any moment to violation, may have to be guarded in peace as in war time! Without going to any tragic length we shall now have to consider the feasibility at any rate of buffer zones — zones on either side of frontiers within which, as in the case of Sweden

and Norway, no fortifications, defences of any kind, or the presence of troops would be permissible. The neutralisation of such zones would at least prevent the creation of such a threatening anomaly as the great German camp at Elsenborn on the very edge of the Belgian frontier.

The violation of Belgium's neutrality dwarfs every other violation of right and law of the War. Atrocities may be explained to the satisfaction of those in whose name they were committed, ruses of war may be argued to cover abuses charged against each other, reprisals may be alleged to warrant the sinking of passenger ships and drowning of innocent civilians, damage to private property and harmless persons by bombardment may be excused on the ground that it was involuntary. But no excuse can be given for the imposition of war upon a neutralised State in defiance of a binding treaty by a guarantor of that neutralisation.

By straining every muscle in vindication of her guarantee England has earned the respect of posterity. No other European State engaged in this frightful conflict can claim to have entered the struggle solely as she did as a matter of national honour and good faith. She was ready in 1911 to go to war at the side of France in fulfilment of her obligations under the agreement of 1904. She was only partly bound to assist France in 1914, but as she was bound to assist France to resist invasion in 1911 so she was bound to resist the invasion of Belgium in 1914. But for that invasion she might have confined herself to carrying out her obligations to France in respect of the navigation of the British Channel and the Atlantic ports. Whether this would have led to war or not would have depended on the development of events. England by intervening for the assertion of the sanctity due to

treaty obligations has established a priceless precedent for the protection of mankind against repetition of the crime of which Germany stands convicted at the bar of history.¹

NOTE ON BUFFER ZONES²

"Buffer" zones are of quite recent origin as a political creation; i.e. where their object is to establish upon the territory of two contiguous States a strip or zone on either side of the frontier which the respective States *agree to regard* as neutral, on which the parties undertake to erect no fortifications, and to maintain no armed forces but those necessary to enforce the ordinary rights of government. The word "neutral" does not correctly describe the character of the zone. It is not neutral in the sense of being recognised as such by any third State, and it necessarily ceases to be neutral in case of war between the States concerned. The word "buffer" comes nearest to the object, but even this term implies more than is meant.

The "buffer" zones between European and native possessions outside Europe differ according to their dif-

¹ A German newspaper in America has quoted from my article on Neutrality in the last edition of the *Encyclopædia Britannica* a "precedent" in the Boer War when Great Britain asked and obtained from Portugal permission to take troops across Portuguese colonial territory. There was no question in connection with this incident of a guarantee by Great Britain of the neutrality of Portuguese territory. Nor had any such neutrality been imposed upon Portugal by neighbouring States. Portugal, in short, was free to allow British troops and ammunition to cross her territory in the same way as Holland would be free to allow British or German troops or munitions of war to cross her territory. It would be for the other belligerent to regard such a departure from the duties of neutrality as tantamount to joining the enemy.

² From Sir T. Barclay's "Problems of International Practice and Diplomacy." London and Boston, 1907.

ferent purposes. Thus eight kilometres on either side of the frontier were established by an agreement of April 12, 1882, between the King of Cambodia (under French protectorate) and the Governor of Cochin-China for the purpose of repressing a number of iniquities. Under this treaty the police authorities of both parties were allowed free access to exercise their jurisdiction throughout the zone. Between Spain and Morocco a treaty of March 5, 1894, established between the camp of Melilla and Moroccan territory a zone within which no new roads were to be made, no herds to be allowed to graze, no land to be cultivated, no troops of either party or even private persons carrying arms to set foot, no inhabitants to dwell, and all habitations to be razed. The zone between Burmah and Siam, established by an agreement between Great Britain and France, dated January 15, 1896, declared "the portion of Siam which is comprised within the drainage basin of the Menam, and of the coast streams of a corresponding longitude" neutral as between them. Within this area the two Powers undertook not to "operate by their military or naval forces, except in so far as they might do so in concert for any purpose requisite for maintaining the independence of Siam." They also undertook not to acquire within that area any privileges or commercial facilities not extended to both of them.

"Buffer" zones might fulfil a useful purpose even in Europe. They would obviously react against the well-known feeling known as "*esprit de frontière*", and diminish the danger of incidents arising out of this feeling, and might attenuate the rivalry of neighbouring counter-armaments.

These considerations no doubt led the Swedish and Norwegian governments in their settlement of September,

1905, to establish a "buffer" zone of fifteen kilometres on either side of the frontier between the two States in question. Within these thirty kilometres all existing fortresses are dismantled,¹ no new ones are to be erected, and no armed troops to be maintained; any question between the two States relative to the provisions respecting the "buffer" zone to be decided by arbitration. There are other provisions in the Swedo-Norwegian Treaty the object of which is to render armaments as *between* them unnecessary.

¹ It was stipulated that the dismantling should be controlled by a technical Commission of three officers of foreign nationality, to be chosen, one by each of the contracting powers, and the third by the two officers thus appointed, or, in default of an agreement on their part, by the President of the Swiss Confederation. The dismantling of the forts in question has now been carried out. The Commission was composed on the part of Sweden of an engineer on the staff of the Austrian army, and on the part of Norway of a Colonel in the German army, and, by agreement of these, of a Colonel in the Dutch army.

CHAPTER XII

THE HAGUE COURT AND ITS POTENTIALITIES

To sneer at the Hague Court, at arbitration, at peace methods generally because the most terrible war the world ever saw broke out in spite of them, is just about as reasonable, as I have said of International Law, as to sneer at engineering, architecture and the science of building generally, because an earthquake has destroyed some of man's finest work. There is no reason to suppose that the treaties relating to Arbitration and the Hague Court and to International Law, as established by the Hague conventions and by treaties between and with our Allies and with neutrals, just as they stood before the War in spite of violations on all hands by belligerents of almost every rule which had been laid down by statesmen and jurists for the humanising, so far as it can be made human, of so insensate a survival of barbarism as war, have lost their cogency and effect. And a stroke of the pen can revive their cogency and effect as regards our late enemies. It is certain that the Congress of Peace will see in an extension of its scope and effect, without expecting from it realisation of any of the dreams of a millennium in which some of its more ardent apologists have indulged, a part of the

work to be done for the promotion of law and order throughout the world.

The Hague Court owes its origin to the Peace Conference of 1899, but to understand its true nature and objects we must go back to an earlier period in the history of International Arbitration. International Arbitration means simply the reference of disputes between independent States to arbitrators chosen by the parties themselves. It is this voluntary and agreed selection of the judges that distinguishes arbitration from adjudication in disputes in ordinary Courts of Justice. Arbitration is no new thing in the settlement of disputes between nations. All cases, however, down to the great one about which I shall speak presently, had been decided by an arbitrator or arbitrators without regard to any particular procedure and without any attempt to assimilate the forms of any national judicature. There was no question of deciding international differences as differences between individuals are decided in Law Courts. It was due to the statesmen of the two great Anglo-Saxon communities that the first attempt was made to deal with grave international differences in accordance with the forms of national justice. In spite of the violent opposition of excited patriots the two governments signed a treaty at Washington in 1871 referring the *Alabama* and several smaller analogous cases to the decision of arbitrators.¹

¹ The *Alabama* was a vessel built in British waters for use as a war vessel in the service of the Southern Confederates during the great

For the first time in the history of arbitration a system which has now become almost common practice was adopted. The Court was constituted of three foreign arbitrators, viz.: Count Sclopis, an Italian, M. Stoempfli, a Swiss, and Baron D'Itajuta, a Brazilian. Lord Chief Justice Cockburn sat on the Court on behalf of Great Britain and Charles Francis Adams on behalf of the United States. Count Sclopis presided. This Tribunal met at Geneva in 1871, and after sitting for nine months delivered an award condemning the British Government to pay a sum of, in round figures, three and a quarter million pounds, as an indemnity for the damage done in particular by the *Alabama* in the capture of Northern or Federal ships for the benefit of their ultimately defeated adversaries, the Southern or Confederate States. The result eventually came to be regarded as highly satisfactory, and excited patriots were obliged to admit that high as the indemnity was, it was an infinitely better solution than submitting the question to the arbitrament of brute force; and we cannot at the present day but rejoice that the Government had the foresight to resist the combative instincts of those who regarded acceptance of a peaceable settlement as the abdication of England's proud independence and an acceptance of foreign dictation in a matter governed by no then existing rules

American Civil War. That the vessel was being built for this purpose was notorious, and the attention of the British Government was called to this fact by the United States Minister in London. The vessel was, nevertheless, allowed to sail, and at the Azores she was equipped for active service in the then pending war.

of international practice. So true is it that there were at that time no such rules that the Treaty of Washington had to lay down certain principles of law which were stated in the treaty not to be of general acceptance but only to have been adopted for the purpose of the case in question. These principles, however, in spite of the British reservation, have become the law of civilised nations, and are now incorporated as such in one of the Hague conventions. The precedent of the Geneva Court, however, remained a solitary exception among the numerous arbitrations which followed it for thirty years.

Meanwhile, in both England and the United States, the idea that arbitration might some day become a standing international institution never ceased to occupy the minds of pacific reformers. It became almost a commonplace to advocate the principle of arbitration in every case of international difficulty, and in 1895 Lord Alverstone, at a meeting of the International Law Association at Brussels, stated that "arbitration was now regarded as so fully recognised by all civilised nations that it had become unnecessary to argue in its support." Schemes of procedure were drawn up by different international bodies, and towards the close of the last century men began to talk seriously about general and standing treaties of arbitration and the possibility of a permanent Court for its application without that ironical undercurrent which until then had marked the expression of the practical man's feelings towards arbitration. It had, in

fact, been made slightly ridiculous by the exaggerated hopes expressed by some of its more injudicious advocates. At length the idea of a standing treaty of arbitration struck the highly practical mind of the late Lord Salisbury as feasible, at any rate, between the United States and Great Britain, and in 1896 he was personally directing negotiations for this purpose with the Department of State at Washington. The negotiations resulted, in 1897, in the signing of such a treaty for five years. I cannot help thinking that the principles of that treaty were full of wisdom. It did not attempt to do the impossible but only to meet different contingencies which could arise between two nations in the way best adapted to avoid national susceptibilities.

There were to be three classes of arbitration tribunals. For questions of indemnity up to £100,000, three arbitrators were to be necessary. When more than that sum was in dispute, five arbitrators were to be called in. For territorial or national questions of supreme importance the number of arbitrators was increased to six. In case of the arbitrators finding it impossible to form the required majorities, a friendly Power was to be called in to mediate.¹

¹ The chief clauses in the Treaty were Article VI and Article VII. Article VI was as follows :

"Any controversy which shall involve the determination of territorial claims shall be submitted to a tribunal composed of six members, three of whom shall be Judges of the British Supreme Court of Judicature, or members of the Judicial Committee of the Privy Council, to be nominated by Her Britannic Majesty, and the other three of whom shall

The essential point in this project was that for these questions of supreme national importance the arbitrators were to belong exclusively to the two contracting States. The idea which had prevailed until then in the constituting of Courts of Arbitration was that the arbitrator or umpire, if more than one, was necessarily a person who, by his independence and entire detachment from the interests involved, had the requisite impartiality for the pure and simple application of principles of justice. It was thought that nations could only apply as between themselves the same principles as regulate litigation between citizens. And indeed the assimilation is reasonable and perfectly practicable for questions of indemnity, which constitute the majority of international differences.

The use of the word "arbitration" in connection with this proposed mode of dealing with such vital issues is therefore to some extent misleading. The

be Judges of the Supreme Court of the United States, or Justices of the Circuit Courts, to be nominated by the President of the United States, whose award by a majority of not less than five to one shall be final. In case of an award made by less than the prescribed majority, the award shall also be final, unless either Power shall, within three months after the award has been reported, protest that the same is erroneous, in which case the award shall be of no validity. In the event of an award made by less than the prescribed majority and protested as above provided, or if the members of the Arbitral Tribunal shall be equally divided, there shall be no recourse to hostile measures of any description until the mediation of one or more friendly Powers has been invited by one or both of the high contracting parties."

Article VII provided for decision by a tribunal similarly composed of all questions "of principle of grave general importance affecting the national rights" of either State, "as distinguished from the private rights whereof it is merely the international representative."

Court provided for that treaty was called an "Arbitral Tribunal." In reality it was a "Joint Commission." This Joint Commission, then, was instituted to meet the difficulty of bringing grave national issues within the operation of the Arbitration Treaty in question. The draftsmen of the Treaty of 1897 knew that no Great Powers would dare to leave the decision of any vital issues between them to the hazard of any independent judgment, however great and unquestioned the impartiality of the judge. It has always been felt that such issues could never be committed to the decision of foreign arbitrators, or of a foreign umpire, an umpire being, for obvious reasons, necessarily a foreigner. The negotiators, therefore, provided that there should be neither outside arbitrators nor any umpire at all. Furthermore, to allay fears that any great national interest might be exposed to quixotic or unpractical views taken by any single judge, it was provided that, to be binding, the decision should require the concurrence against it of two out of three of the judges appointed by either party. This precluded, by a simple and practical method, for both countries, any danger of decisions which might excite national distrust. The object of the two governments was, manifestly, not so much to create a substitute for war, as to provide a further stage of negotiation, and enable Governments to issue from any deadlock into which they might have been drawn in the heat of controversy or by pressure of public opinion.

They consequently limited their efforts to the creation, without the introduction of any third

or independent element, of an automatic system, calculated to remove questions between the two States from irritating discussion by irresponsible politicians who can seldom be sufficiently conversant with the facts to deal efficiently with them. They hoped thereby to arrest the development of those vague hatreds, created by prejudice and ignorance, which grow no one knows how, and soon break away from their initial cause. Unfortunately this Anglo-American Treaty was not adopted by the United States Senate, although there was a majority of sixteen in its favour, owing to the fact that the United States Constitution requires a two thirds majority for the adoption of a treaty. There were 42 votes for and 26 against it. A transfer of four votes from the negative to the affirmative would have sufficed to ratify it.

At length came the Czar's famous rescript of 1898. Count Muravieff, his Foreign Minister, included among the subjects for discussion the establishment of a uniform practice in reference to good offices, mediation and facultative arbitration, but the proposal of a Court of Arbitration once more came from the representatives of the two Anglo-Saxon communities. It was more particularly, in fact, Lord Pauncefoot, the British Delegate, who had signed the Anglo-American Treaty when British Ambassador at Washington two years before, to whom the proposal of the Permanent Court was due.

There is something colossal in the very idea of a permanent Court of Justice for the decision of

differences between States. One thinks of the graduation of our national Courts, of how our judicial organisation provides an ever higher rank and greater function, as it ascends from rung to rung in the hierarchy, and yet the highest rung only deals with very small matters compared with the immense interests involved in the decision of an international issue. Our sense of proportion asks where we should find the judges great enough to inspire awe and confidence in the mighty litigants who are to humbly submit their differences to this highest jurisdiction of mankind.

States shrank from making recourse to the new Court compulsory. In fact they repudiated the idea of compulsion in every provision of the Convention of 1899, and much to the disappointment of many of the more ardent votaries of arbitration, it contains specific warnings of its purely optional character. Thus the signatory Powers undertake, in case of grave disagreement or conflict, before appealing to arms, "as far as circumstances allow", to have recourse to the good offices or mediation of one or more friendly Powers, and, "as far as circumstances allow", the Powers may tender their good offices, and the exercise of this right can never be considered as an unfriendly act. Provision is made "as far as circumstances allow", and where involving "neither national honour nor vital interests", for international commissions of inquiry which are to have no binding character for the parties.

The Convention on the subject states that the

object of the Permanent Court was to facilitate immediate recourse to arbitration for international differences which it had not been possible to settle by diplomacy. It was to be at all times accessible and to operate, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the Convention. The Conference, it is seen, left it to the Powers themselves to organise the Permanent Court, but it made a suggestion of what might be the composition of the Court failing direct agreement of the parties, viz.: that each party should appoint two arbitrators and that these together should choose an umpire.

It was also agreed that each signatory Power should select four persons of known competency in questions of international law and of the highest moral reputation to form a panel of members of the Court from which the Arbitrators could be selected. The panel was duly created, but for some time it seemed as if the Court was destined to remain a mere pious wish, if not an ironical demonstration of the absurdity of "pacifism", a term which had been invented by the adversaries of pacific methods generally. For three years no recourse was had to the new institution. To the English judicial mind in particular it merely appeared as a sort of concession of the practical man to popular sentiment, even perhaps to popular ignorance which it would be safe to ignore. At length the United States and Mexico, less susceptible to the ridicule of the ignorant, gave it its first case, and "gave a lesson to the Old World."

The lesson had its effect. It was *le premier pas qui coûte*, and since then the Hague Court has had many cases. I do not say that they have all been cases which would not have been settled by arbitration without the existence of the Hague Court, but I do say that the existence of this Court has facilitated recourse to arbitration, that irritating discussion preliminary to the adoption of its procedure has been avoided, and that it has had a suggestive influence generally which has relieved States from any need of public justification of recourse to its peaceful agency. Its utilisation, moreover, may be the means of proceeding further in the development of arbitration by the broadening of the area of its jurisdiction, so to speak, and by the adaptation of its methods to the varying requirements of international controversies.¹

International Law is not backed up with a police force to carry out its fiats. It depends for its observance upon the reasonableness of its rules. Diplomacy, the chief agency by which, in time of peace, International Law is applied, on the other hand, like the procedure of our domestic courts of justice, is largely a congeries of devices which have grown up to provide for requirements shown to exist, owing to the inherent intellectual shortcomings of the men who resort to law or even of those who have to apply it. In our domestic

¹ See a full analysis of the cases which have been dealt with by the Hague Court: Barclay, "New Methods of Adjusting International Disputes and the Future", chap. VII. London, 1917.

courts we distrust leaving irrevocable decisions to the judgment of one man or prescribing finality either to arguments or to evidence. And, to a great extent, circumstances have also led in diplomacy to the employment of many different forms to enable governments in a similar way to avoid the calamity of deadlocks. Yet deadlocks do occur, and we had, before the diplomatic breakdown of 1914, recently been more than once brought to the verge of war with powerful neighbours by practical deadlocks. Our diplomatic machinery, in spite of its arsenal of forms, failed for want of a further jurisdiction, which, by operation of law, without further discussion, should become necessarily possessed of the question at issue. We cannot disregard the natural weaknesses of mankind in the relations of nations with one another. Patriotism, ignorance, "bluff", improvidence, thoughtlessness, courage, love of excitement, conceit, conviction (right or wrong), misunderstanding, exaggeration, all affect the course of international questions, when public opinion is appealed to or allowed to take any part in their decision. This is the danger, and successful as our diplomacy usually is, we can no longer rely, in the circumstances of the present age — with a vigilant and enterprising press ruthlessly day by day dissecting every international incident, and a nervous, overstrained democracy which, especially in overcrowded cities, claims its say in all public matters — on the quiet settlement of difficulties, which the accredited diplomatists have not solved, without the aid of some further

dilatory amicable procedure by which governments can at least gain time.

Whatever difference of opinion may exist as to the mode in which arbitration can be best adapted to cover such and all cases of international difficulty, we have the great, if only, precedent of a general arbitration treaty between great Powers, the unratified Anglo-American Treaty of 1897. It cannot be denied that that treaty is based on a reasonable view of the difficulties which beset arbitration, where national questions of vital importance are involved. It embodies, at any rate, as President Cleveland said of it, a "practical working plan" for bringing these delicate matters within a general treaty. On the other hand, the Hague Convention has dealt with all matters but this very class, which was excluded from the purview of the Conference, and as regards all others but this class, reference to the Hague Court is fast being made compulsory. Then what is wanted, to complete the work done at the Hague, is to graft upon it some such provisions as those contained in the Anglo-American Treaty, confining the choice of the arbitrators, where the question is of vital importance, to persons exclusively of the nationality of the States concerned.

There are three great landmarks in the history of systematic arbitration, that is, arbitration as a judicial method of adjusting international differences. The first was the Anglo-American *Alabama* arbitration at Geneva in which the forms and pro-

cedure of law courts were followed. The second was the constitution of a permanent court of arbitration at the Hague modelled more or less upon the principles of the Geneva arbitration court. The third was the first standing treaty of arbitration, under which two great Powers determined to submit all differences of a judicial character to the decision of this court. That treaty was signed by Lord Lansdowne, the British Secretary for Foreign Affairs, and M. Cambon, the French Ambassador, on October 14, 1903, a treaty for ever memorable because it was the first of the series of agreements which consolidated the Entente between England and France. It provided that differences "of a judicial order, or relating to the interpretation of existing Treaties between the two Contracting Parties, which may arise, and which it may not have been possible to settle by diplomacy, shall be submitted to the Permanent Court of Arbitration, established by the Convention of July 29, 1899, at the Hague, on condition, however, that neither the vital interests, nor the independence or honour of the two Contracting States, nor the interests of any State other than the two contracting States, are involved."

The terms of agreement as adopted by Great Britain and France became a sort of common form, and in the course of a few years there were but a few States in the world which had not concluded with each other similar treaties. The Hague Court, in fact, was now universally recognised as an international institution with a definite function.

A fact which has probably been forgotten by

most people by this time is that the Russian original project of a general treaty of arbitration provided that it should be obligatory. The then famous Article 10 of that project provided as follows :

“From the ratification of the present Act by all the signatory powers, arbitration is obligatory in the following cases, in so far as they do not affect either vital interests or the national honour of the contracting States :

“1. In cases of difficulty or contention relating to pecuniary damage suffered by a State or its citizens, in consequence of illegal acts or negligence of another State or its citizens.

“2. In cases of difference relating to the interpretation or application of the treaties or conventions herein mentioned.

“(a) Treaties and conventions relating to posts and telegraphs, railways, protection of submarine cables; prevention of collisions on the high seas; navigation of international rivers and inter-oceanic canals.

“(b) Conventions relating to copyright and industrial property (patents, trade-marks, etc.); to money and weights and measures; to sanitary and veterinary matters and the phylloxera.

“(c) Conventions relating to successions, cartel and mutual judicial assistance.

“(d) Conventions relating to boundaries, in so far as of a purely technical and nonpolitical character.”

To the first class in this enumeration some exception was taken, but the conference was practically

agreed on the general principle of the article, viz.: that the signatories should oblige themselves to refer to arbitration all matters not involving a vital interest or the national honour. After recasting the Russian project to meet different objections of detail, the idea of making reference to arbitration obligatory, even on these minor matters, had to be abandoned. One Power alone, but a very great Power, refused to agree to obligatory arbitration in any case whatsoever. That Power was Germany, who "did not consider that she could enter into any treaty binding herself beforehand to submit new cases to arbitration." But for Germany's persistent obstruction, arbitration might by now have reached a point at which even "national honour and vital interests" could be included in its jurisdiction.

At the time it seemed as if this opposition on the part of a leading State on an essential point would made the whole work of the conference in reference to arbitration a mockery, and there was general disappointment, not confined to those who had hoped that, though the Russian Emperor's original idea of disarmament had not found favour with any of the chief participants in the conference, at any rate some sort of obligatory arbitration would be adopted which would largely compensate for its rejection. Obligatory arbitration, in fact, had become for many the chief object of the conference, and it seemed to them as if without it no headway in the cause of peace would have been made at all. When the conference came to an end the stormy

petrels of the press and magazines were jubilant at this apparent failure of the conference to do anything but put in the form of an agreement the rules already practised. There could be little doubt, however, that thenceforward the statesmen of the Western nations intended to treat the Hague Court seriously and, with a recognised Court to apply it, there was no longer anything Utopian in the idea of a code of international law. For all cases of a judicial character the Hague Court had become as much the appropriate jurisdiction as any national court for similar cases. We heard no more about the futility of a Court which had no means of enforcing its decisions. Universal public opinion afforded the necessary sanction. Although as many as thirteen cases have now been decided by the Court, and two at the outbreak of the War were still pending, and the Powers which have submitted differences to it number seventeen,¹ including some States which have even been regarded as unruly, not a single instance has occurred of a State showing even the slightest disrespect for the decision given.

We must, however, remember a point which is often overlooked, that the parallel in national justice to an international court of arbitration is a civil not a criminal court with powers of punishment. It is a jurisdiction which is essentially a court for

¹ The States which have agreed to references are as follows: Great Britain, France, Russia, Germany, the United States of America, Japan, Mexico, Spain, Italy, Belgium, the Netherlands, Sweden, Norway, Portugal, Turkey, Peru, Venezuela.

the decision of points of law and the assessment of damage. Whether we are likely ever to reach a stage in which such a court can deal with any but questions of judicial right is a different point.

The Anglo-French treaty contained the proviso that it should not apply to questions involving vital interests, the independence or the honour of either State. This was the class of questions which in the Anglo-American treaty of 1897 corresponded to questions of "grave general importance affecting the national rights" reserved for a joint commission as distinguished from a court of arbitration. This exclusion of the very matters which seem the only kind capable of inflaming public opinion to a dangerous point shows the limit to which in both America and Europe statesmen are prepared to go so far as arbitration is concerned.

"Vital," seems to mean some difficulty which can only be solved by reversion to the *status quo ante* or the reversal pure and simple of the act committed. If, for instance, the English port authorities had declined in time of peace to allow a French man-of-war to leave Gibraltar until a case arising out of a collision were tried, France would probably have refused to submit the question of the detention to arbitration, but might have agreed to the determination by arbitration of the liability of the vessel and assessment of the damages. The freedom of movement of her vessels of war she would have considered as a vital interest, the other as a difference of a judicial order.

The determination of what is a question involving "national honour" is less easy. An insult to an ambassador or to the national flag may be regarded as examples. Though an indemnity may be paid by way of damages, it is obvious that no State would willingly agree to an arbitration in which it might be competent to the tribunal to declare that no damages were payable or would allow a third party alone to assess the payment which would repair an insult. It is only where there may be a doubt whether a certain act is an insult or not that conceivably arbitration would be accepted by a State which felt some doubt itself. On the other hand the overheated discussion of any question or the difficulty of receding from an erroneous or one-sided view of a question may be regarded as involving a national honour conspicuously absent in most such cases from the controversy.

It has been proposed by the United States Government that the Court should be assimilated even in its composition to a national court, that judges, as in the case of national judicatures, be appointed and sit in rotation, and that a special selection of arbitrators *ad hoc* should become unnecessary. An exhaustive scheme was submitted by the American delegates at the conference of 1907 for the purpose of creating this "Court of Arbitral Justice." Out of the panel forming the court three judges were to be selected to form a special delegation, and three more to replace them if the former were

unable to act. They were to meet in session once a year on the third Wednesday in June, the session to last until all the business on the agenda had been transacted. The difficulty of an annual selection by all the powers involved might, no doubt, be overcome and probably the scheme of the United States with some minor modifications will before long bring the court into a closer harmony with existing judicial systems.¹

What, then, are the potentialities of the Hague Court? Since it came into existence in 1899 there have been six wars — the South African, the Russo-Japanese, the Turco-Italian, the Turco-Balkan, the Inter-Balkan, and the recent gigantic conflict. In none of these cases has there been matter for arbitration. They have all been wars of conquest, deliberately undertaken with a view to conquest. In the Turco-Italian and the recent War no time was left after the declaration of war for any mediation which might have led to arbitration, if there had been, in either, any arbitrable matter. In the Inter-Balkan War the hostilities broke out without even a declaration of war. In the Turco-Balkan War even the disguise of a grievance was dispensed with, and in the South African War, in which grievances were alleged and there was time for arbitration, it was firmly declined.

It is obvious that where one of the parties is decidedly in the wrong, he will not agree to arbitration. We may therefore eliminate from among

¹ See Barclay's "International Law and Practice", chap. VIII. London and Boston, 1917.

the potentialities of the Hague Court recourse to it where one of the parties to the difference has an unavowed object or an avowed object which according to the principles of justice would have to be condemned. It is a court for the determination of cases in which there are disputed questions of right and damages, questions in which rules of law and justice are applicable, and in which the parties seek in good faith an honest solution.

And yet there are powers which might be given to it, even in cases like the recent terrible War. It might sit as a sort of court for grievances before which all alleged violations of international treaties or usages might be laid; by which all cases of futile cruelty might be judicially examined. It might not only condemn such violations of law and humanity but it might offer recommendations and help to prevent the growth of illegality.

It may be a dream but one wonders whether out of the Hague Court and its further developments, some institution may not be evolved in which men of different nations may be elected by civilised mankind to possess in common the citizenship of all nations and relinquish patriotism or political attachment to any one of them, an institution entitled to express its opinions and give its advice with all the sanctity of the oracles of antiquity. Or perhaps, a special State may some day be created like the District of Columbia, created to fulfil the purpose of securing independence among the States of the World, or it might be a special college of jurists having an existence as independent as the

Vatican. In any case, some such body of "super-men" who have nothing to gain and nothing to lose might come to wield a power over the minds of mankind not unlike that at present wielded by the Holy Father at Rome or by the Caliph over Moham-medans. President Wilson's proposal of a Society of Nations may lead to the realisation of some such greater moral force than the world at present possesses to protect men against their own cruel and rapacious instincts and to set a higher tone of human sympathy and fraternity among mankind generally.

NOTES TO CHAPTER XII

DRAFT SUGGESTIONS OF A CONVENTION FOR IMPROVED ORGANISATION OF HAGUE CONFERENCES ¹

The plenipotentiaries of the following H. C. P. . . . who signed at the Hague . . . 1907, the Conventions and Declarations established by the second Hague Peace Conference,

Considering that it is desirable to try to profit by experience acquired and facilitate, as far as possible, the convocation, preparation, and preliminary work of future Conferences;

Whereas it is necessary to make a distinction, and in fact a distinction has been made, between questions of a general character in which all the States are interested and those which are fundamental only to the greater Powers;

Whereas Article XXII of the Convention for the Peaceful Settlement of International Differences of 1899 (Article XLIII of the revised Convention of 1907) created an *International Bureau* at The Hague which serves as Registrar and Record Office for The Hague International Arbitration Court, and Article XXVIII of the said Convention (Article XLIX of the revised Convention of 1907) has constituted a *Permanent*

¹ From Sir T. Barclay's "International Law and Practice." London and Boston, 1917.

Administrative Council, composed of the diplomatic representatives of the Signatory Powers accredited to The Hague and presided over by the Dutch Minister of Foreign Affairs ;

Whereas these two bodies are in existence and have fulfilled their office to the satisfaction of their respective principals, and whereas it is desirable to centralise the work of The Hague as far as possible ;

Whereas it is expedient to constitute further a body of international jurisconsults to whom the Powers can have recourse upon all judicial matters as well as to assist the *International Bureau* and the *Administrative Council* as legal experts, and to act as a Consultative Committee able to take charge, *inter alia*, of the preparation of the work of future Hague Conferences, and within the scope of its capacities deal with such matters as the said *International Bureau* shall be instructed by the Consultative Council to require of it ;

With a view to dealing with above objects, the purposes and duties of the several bodies above referred to shall be as follows :

1. The *International Bureau* shall discharge the following duties outside its ordinary functions as registrar of the International Arbitration Court :

(a) To preserve and classify all the documents relating to the Conferences ;

(b) To keep the H. C. P. informed of all questions concerning the work of the Conferences ;

(c) To constitute, improve, and catalogue a library of International Law and accessory knowledge ;

(d) To draw up an annual report of its work for submission to the *Administrative Council* ;

(e) To serve as intermediary for all communications between or among the Signatory Powers ;

(f) To transmit immediately all communications received to the *Administrative Council*; and

(g) To be, in general terms, under the direction of the *Bureau* of the *Administrative Council*, and to perform all secretarial and executive duties committed to it by such *Bureau*.

2. The *Administrative Council* remains composed of the diplomatic representatives of Contracting Powers at The Hague, who shall every year elect two Vice-presidents, not eligible for more than two successive years of office. The President and the two Vice-presidents shall form the *Bureau* of the *Administrative Council*.

Outside its functions in connection with the administration of the International Arbitration Court, it shall discharge the following duties: Assemble on convocation by its *Bureau* to discuss the matters submitted in the agenda drawn up by the said *Bureau*, or such matters suggested by any member of the Council of which due notice shall have been given; to take note of all communications received from the *International Bureau*; give the necessary instructions to the said *International Bureau* and receive the annual report of that *Bureau*. Minutes of the meeting of the Council shall be kept, but they shall only be binding upon the Signatories thereto. Two copies shall be given to each member.

3. Apart from the *Administrative Council* and *International Bureau*, a Consultative Committee shall be created and composed as follows:

(a) Four members selected by the Institute of International Law;

(b) Four members selected by the *Administrative Council*; and

(c) Four members selected by the Committee as thus far constituted.

25) COLLAPSE AND RECONSTRUCTION

One of each category shall retire on expiry of every two years, and not be re-eligible for two years after five years' tenure of office.

The Consultative Committee shall be entrusted with the preparation of the work of future Conferences and with the examination of all questions which have been submitted but not solved at previous Conferences. It shall also examine all matters submitted to it by the Administrative Council or by any member of the said Council individually.

The International Bureau shall be entrusted with the secretaryship of the Committee.

The Bureau of the Administrative Council may, if the Committee so desires, invite specialists in military, maritime, or other matters to give the Committee the benefit of their expert advice.

It shall fix the remuneration of the members of the Committee and of the said occasional specialists.

4. The Bureau of the Administrative Council may call a general meeting of the Consultative Committee to discuss any questions it may deem desirable to submit to it, or recommend States to send representatives to any Conference to be held at The Hague or elsewhere to deliberate upon any matters it may deem of sufficient importance.

CHAPTER XIII

BALANCE OF POWER AND FEDERATION

ONE of the profoundest fallacies of contemporary statecraft, as past events have consistently proved and as has once more been demonstrated by the present complete breakdown of the theory, is that the balance of power makes for peace or is a means of preserving it. Events, on the contrary, have shown that the balance of power merely makes the issue of an armed struggle doubtful. What really makes for peace is such an overwhelming combination interested in its preservation that any one State would be naturally discouraged from any attempts to break the peace.

The overwhelming power of the Roman Empire was able to keep peace in the then world for several centuries, as Great Britain has been and is able to do in India. But empires are not emanations of political freedom. While they impose the sway of a directing executive, free countries exercise their executive power by delegation. The one is operated from above, the other from below. The one has an independent interest of self-preservation apart from that of the people governed, the other

draws its breath from its constituents and it is they who have the interest of self-preservation.

Free countries are necessarily unwieldy for purposes of aggression and therefore less able to bring the moral effect of "preparedness" to bear on the promotion of political purposes in foreign relations than empires, that is to say strongly centralised States. To resist the tendency of such States, they have to resort to combination or federation. Hence federation is the reverse of empire, the one receiving its powers from its constituents, the other delegating powers to its dependents.

The break-up of the three greatest instances of empire may result in eventual federation of all three as a League of Nations for defence against the reaction which may be in course of evolution in countries which have hitherto been the home of political freedom, for seldom if ever in history has victory been of advantage to popular liberties. This union for self-preservation against external neo-aggressive tendencies may present material features of great importance for the future of democracy throughout the world.

NOTES ON CHAPTER XIII

NOTE ON THE PROBLEM OF AUSTRIA-HUNGARY

It was a diplomatic platitude to speak of Austria-Hungary as a geographical necessity. The Empire-Kingdom had survived the break-up of the Holy Roman Empire as wreckage and out of the wreckage came a composite structure due to requirements of self-preservation and because this was a necessity it survived. Well-informed persons thought it would not outlive the reign of the late Emperor-King. It did not long survive him, but its break-up was followed by consequences which seemed destined to show that remedy by break-up for the grievances of her peoples may be worse than the complaint. The weakness of Austria-Hungary lay in the attempt to rule by a dual system instead of through a general federation. The salvation of small communities and nations is not isolation, as they generally begin by thinking, but coöperation or federation which enables them to preserve their respective liberties at home while obtaining the security and strength union gives to those too weak to assert their rights against external dangers singly.

Federation, moreover, while assuring strength for defence, creates none of those aggressive tendencies which seem inseparable from the centralisation of power. Nothing has proved more conclusively the strength of even a tie of unorganised federation, when a conscious

common interest is at stake, than the support England has had from her self-governing colonies not only in spite of the weakness of the bond of union between the component parts of the empire, but in spite of domestic government in each of them being as little centralised as is compatible with government of any kind.

President Wilson saw the importance of preserving Austria-Hungary, and, wiser than those who demanded its destruction, he asked that its place among nations should be safeguarded and assured. The peoples composing it should be given, he said, the first opportunity of autonomous development. It is not clear why he weakened his recommendation by qualifying it in the words "first opportunity." The present opportunity was the first and the Allies have in fact recognised the courageous "élan" of the Czechs as a ground for giving Bohemia that domestic autonomy for which she has agitated and sacrificed life and liberty so amply.

None knows better than the President, however, how often in the course of history the achievement of freedom has meant freedom for those who fought for it and has degenerated into freedom to oppress others. Guarantees will assuredly be asked of the peoples concerned that all the benefits and franchises of autonomous government shall be enjoyed by the inhabitants of the territory placed under autonomous government without distinction of race, origin or religion of any kind whatsoever.

The President's utterances and the whole tenor of Anglo-Saxon civilisation of the principles of the French Declaration of the Rights of Man require this affirmation of racial and religious tolerance.

The difficulties of Austria-Hungary were largely due to the rival influences of Germany and Russia, especially

to that of the latter, which, true to the tradition of autocracies, kept Slav grievances in a smouldering condition ready to be fanned into flame whenever domestic difficulties grew out of hand and exposed the existing régime or dynasty to serious trouble. The overthrow of the Russian dynasty delivered Austria-Hungary from its chief tormentor. It is doubtful if the Russian interest in the Slav communities had any protective effect against persecution in Hungary, where it seemed merely to excite hostility against Slav population and communities.

The Emperor Karl, a pupil of the late Count Aehrenthal, Count Burian and Professor Lammasch, had been inoculated with the federative ideas of these enlightened men. It was Aehrenthal who sent him at a time when he never dreamt that he would succeed so shortly, if ever, to the throne, to Prague, as a handsome, genial and open-minded young Prince, whom he wished to understand the Czechs and eventually perhaps to become the champion of their aspirations. I met him there in 1908, doing his best without funds to make himself popular and successful in doing so to a certain extent.

Count Burian is a believer in federation. A Hungarian endowed with all the political genius of a gifted people, a keen observer of the conditions and potentialities of all the races and provinces of the Empire-Monarchy, he was joint Austro-Hungarian Minister of Finance and Administrator of Bosnia-Herzegovina when the crisis connected with the annexation of that province took place. Europe was utterly misled over this crisis, owing to the prevalent ignorance in Western Europe of Balkan and Austro-Hungarian conditions, by an astute but unscrupulous Russian diplomacy. I was at the time close to events and was privileged to play a part in the settlement which Baron Burian, as he then was, with

consummate ability and energy brought to a peaceful issue.

Thus in the new sovereign and in Count Burian, his most trusted adviser, President Wilson would have had a congenial soil for the planting, acceptance and application of those federative and democratic principles for the vindication of which America entered the war on the side of the Allies.

A federation in which there would have been but one central government instead of two, constitutional equality for each of the provinces, and a general parliament representing them all granting its powers of government to ministers of its own choice is the sort of settlement I presume Count Burian contemplated. The geographical position and economic requirements of South Central Europe which led to grouping of States into an empire are permanent factors which will operate whatever the form or forms of government chosen by the peoples concerned. We may, therefore, expect that the component elements of the late Austro-Hungarian Empire, as soon as their domestic conditions of autonomy are assured, will readjust their mutual relations in the sense of a federation to which a powerful neighbour may not be favourable. Any active opposition on her part, however, may force the speed of the process of a reunion which is a necessity of self-preservation and involves economic interests of supreme importance.

NOTE ON THE OTTOMAN EMPIRE

There is nothing more pathetic in history than the failure of the "Young Turks" to rescue their country from the barbarous yoke of the Serail. It is orthodox to attribute the failure to the Young Turks themselves

and to abuse them as a pack of adventurers who, on getting possession of power, used it in the same way as the Hamidian régime they had superseded.

This is not the opinion of all disinterested observers, certainly not of some of those who were in close contact, like myself, in the winter of 1908-1909, with the moving spirits of the Young Turk movement.

The leaders were all comparatively young men, most of them intellectuals, Arabs, Armenians, Jews, Greeks, a galaxy of all the kinds of men Macedonia and Asia Minor produce — a microcosm of the Ottoman Empire just as little Turkish as Turkey itself, for in reality there are few, if any, genuine Turks in the world at all. Where there is a difference it is between Mohammedan, Christian, and Jew. And when those who are familiar with the Near East speak of the superiority of the Turks as the "only true gentlemen" among the near Eastern peoples, they mean the genuine Mohammedans whose integrity, independence, dignity and generosity in thought and in deed is just as marked in Bosnia-Herzegovina, where the whole population is Serbian, as at Constantinople and in the Levant.

When, therefore, President Wilson stipulates that the Turkish portions of the Ottoman Empire should be assured a secure sovereignty it is not easy to determine to which part of the Turkish population he refers.

Religion, not race, determines the different tendencies, ideals and polity of the different sections of the population of Turkey.

The Young Turkish movement was as genuinely Turkish as any action on the part of Turkey can be. If it failed, it was not from anything intrinsically wrong in its composition but because, as most revolutions necessarily are, it was under the leadership of men who had

had no experience of government and because as upstarts and adventurers, which as revolutionaries they necessarily were, they were not encouraged, in fact were more or less discouraged, by those who ought to have been their friends.

In spite of the almost open hostility of Western diplomacy, the Young Turks endeavoured to bring about beneficial reforms, but these implied taxation, and under the old régime, taxes mainly took the form of exactions from those whom it was worth while to coerce. The poor, incapable of yielding either tribute or baksheesh, bore little or none of the burden of taxation, and when the Young Turks began to introduce Western methods into the raising of revenue, it was easy for their enemies to arouse hostility on the part of those for whose emancipation they were working by representing them as oppressors — only showing that the Eastern feeling towards the “publicans” had changed little in the course of two thousand years.

Deserted by those who ought to have been their friends the Young Turkish movement was exposed to all the vicissitudes of political and social upheavals. As soon as the empire seemed to be settling into a stable condition, the first blow at its integrity was struck and Italy began the series of wars which have followed one another in such close sequence and interconnection that the historian would be justified in lumping them together as one war and calling it in accordance with its duration which may still be long, in so far as the coming settlement is not based on the geographical and economic requirements of the peoples concerned.

The only diplomacy which showed any sympathy with the Young Turkish movement was the German. The still young and inexperienced men who were at the

helm, when the crisis of 1914 came, preferred the German to the Russian lead as the lesser evil, especially as the German clutch was upon their shoulders and it was easier to let it remain than to shake it off.

The question of Turkey's preservation, it is seen, is not one of race and it cannot be one of religion, for except among the Arabs, far from the real seat of interest for Europe, the religions are as scattered as the races. Expediency alone can dictate a settlement in which the Allies have interests almost as scattered. In fact, a self-denying protocol will almost necessarily have to precede any discussion to eliminate non-interests and reduce the question to specific areas and points. The device of determining "spheres of interest" which has averted conflict in two or three parts of the world already will probably be resorted to once more. Temporary, unsatisfying and undemocratic as such a method of picketing and impounding an independent country and its people may be, the predatory traditions of Western Europe are still so persistent and the "interests" of the European Allies in the Near East and the Levant have become so interlocked that the greatest delicacy will be required to prevent conflict over the spoil. Religion, geographical necessity and political exigencies will leave little room for the assertion of those democratic principles which in Western Europe it is to be hoped will be an immediate and inalienable result of the War.

There is a proverb that warns men against discussing trouble before it arises. In any case the time has not yet come to argue in public questions on which the Allies themselves may be exposed to serious disagreement. Perhaps to prevent its taking an acute form consideration will be shown for the requirements, feelings and intelligence of the inhabitants of the countries concerned.

**ALLIES' AGREEMENT RELATING TO CONSTANTINOPLE AND
THE STRAITS AND FOR PARTITION OF ASIA MINOR**

The following statement is taken from the *Pravda*, a Maximalist organ from which it had been translated into French, from which in turn it is now translated into English :¹

"On the 19th February/4th March, 1915, the Tsar's Minister for Foreign Affairs transmitted to the Ambassadors of France and Great Britain a memorandum wherein the wish was expressed that, as a result of this war, the following territories should be united with Russia :

"The city of Constantinople, the western shore of the Bosphorus, the Sea of Marmora, the Dardanelles, Southern Thrace as far as the Enos-Midia line, the shores of Asia Minor between the Bosphorus and the river Sakaria and certain points in the Ishmid Gulf, the islands in the Sea of Marmora and the Imbros and Tenedos Islands. The special rights of France and England in the said territories to remain safeguarded.

"The French and English Governments gave their consent to our requests provided the war should be finished rapidly and successfully and that satisfaction should be granted to a whole series of claims by France and England in the Ottoman Empire and elsewhere.

"These claims as far as they concern Russia result as follows :

"The recognition of Constantinople as a free port for the transit of goods not coming from or going into Russia and the free passage of the Straits for merchant vessels.

"The recognition in Asiatic Turkey of the rights of Great Britain and France which require to be exactly determined by a special agreement between France, Great Britain and Russia.

"The preservation under independent Mussulman sovereignty of Arabia and the Mussulman Holy Places.

"The inclusion, in conformity with the Anglo-Russian

¹ Translated from the French by Mr. A. Wright.

Convention of 1907,¹ of the neutral zone of Persia within the British sphere of influence.

"Acknowledgement that these claims shall be granted.

"The Russian Government however made some reservations:

"In view of our wishes concerning the Mussulman Holy Places, it is necessary immediately to decide whether these places shall remain under Turkish sovereignty, the Sultan keeping the title of Caliph, or is it proposed to create a new independent State? In our judgment it is desirable that the Caliphate be separated from Turkey. In any case, freedom of pilgrimage must be assured.

"While agreeing that the neutral zone in Persia should be subject to British influence, the Russian Government nevertheless considers it just to ask that the towns of Ispahan and Yezd be left to Russia and also that the part of the neutral zone which forms the corner between the frontiers of Russia and Afghanistan and abuts on the frontier of Russia at Zoulfagar be included in the sphere of Russian influence.

"At the same time the Russian Government considers it desirable to settle the question of the contiguity of Afghanistan and Russia in accordance with the wishes expressed in the *pourparlers* of 1914.

"On the entry of Italy in the war, our claims were communicated to the Italian Government and the latter gave their consent thereto, subject to a victorious conclusion of the war giving satisfaction to the wishes of Italy in general and in the East particularly, and granting her the same rights as granted to France and Great Britain in the territories ceded to us."

NOTE ON THE QUESTION OF ASIA MINOR

"As a result of the *pourparlers* which took place in the spring of 1916 in London and Petrograd, the allied

¹ This is probably a mistranslation from the Russian text. It reads in the original probably: "The inclusion within the British sphere of influence of the neutral zone as determined in the Anglo-Russian agreement of 1907."

governments of Great Britain and France and Russia came to an agreement relating to the future division of zones of influence and territorial acquisitions in Asiatic Turkey and in reference to the formation within the limits of Arabia of an independent Arabian State or of a confederation of Arabian States.

"In its principal heads the agreement may be summed up as follows :

"Russia acquires the provinces of Erzeroum, Trebizond, Van and Bitlis, as well as the Southern Kurdistan territories as per the line Moucha-Sert-Ihn-Omar-Amalia, Persian frontier. The terminus of the Russian territorial acquisitions on the shores of the Black Sea would be a point to be ultimately settled west of Trebizond.

"France receives the strip of the shore of Syria, the vilayet of Adana and territory bounded on the south by the line Aintab-Kharput up to the Russian frontier and in the north by the line Ata-Dagh-Kessaria-Ak-Ladge-Vildiz Dagh-Zara-Orguine-Kharput.¹

"Great Britain acquires the southern portion of Mesopotamia with Bagdad and reserves to herself in Syria the ports of Haifa and Acre.

"According to a convention between France and England, the zone between the French and English regions will constitute the confederation of the Arabian States or one independent Arabian State whose zones of influence shall be then determined.

"Alexandretta is declared a free port.

"For the purpose of guaranteeing the religious interests of the Allied Powers, Palestine and the Holy Places are excluded from Turkish territory and shall be governed under a special régime to be settled by a convention between Russia, France and England.

"As a general rule the Contracting Parties agree to recognize the concessions and prerogatives which existed before the war in the districts acquired by them.

"They accept a part of the Ottoman debt in proportion to the territories acquired.

¹ Probably Ata Dag, Kaisarieh (Caesarea Mazaca), Ak Dag, Yildiz Dag, Zara, Arabgir, Kharput.

"N.B. As for the zone of influence almost exclusively inhabited by Mussulmans, in accordance with the Franco-English agreement, it was to be divided between the Arab Sultanates which, in the districts of Damascus, Aleppo and Mossul were to seek from France the political, technical and financial assistance which they would need from abroad, whereas in the Mesopotamia districts they were to seek such assistance from England. The King of Mecca, Master of the Holy Places of Islam which interest a large number of the ressortissants of the three Powers, was to be independent."

NOTE ON IMPERIAL FEDERATION AND INDIA

The following preambles to the Acts of Parliaments providing for federation of the three great British self-governing Colonies restrict their development as political units to their respective geographical areas :

An Act for the Union of Canada, Nova Scotia, and New Brunswick and the Government thereof; and for Purposes connected therewith (March 29, 1867).

"WHEREAS the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be Federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to the United Kingdom :

"And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire :

"And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government be therein declared :

"And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America."

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An Act to Constitute the Commonwealth of Australia (July 9, 1900).

"WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

"And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen."

An Act to Constitute the Union of South Africa (September 20, 1909).

"WHEREAS it is desirable for the welfare and future progress of South Africa that the several British Colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland:

"And whereas it is expedient to make provision for the union of the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony on terms and conditions to which they have agreed by resolution of their respective Parliaments: and to define the executive, legislative, and judicial powers to be exercised in the government of the Union:

"And whereas it is expedient to make provision for the establishment of provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration:

"And whereas it is expedient to provide for the eventual admission into the Union or transfer to the Union of such parts of South Africa as are not originally included therein."

It may be doubted whether federation is a feasible method of government except where the geographical situation and economic interests of the constituent parties

are such as to make union for self-defence or the promotion of common commercial interests desirable. Patriotism and the link of common origin no doubt have their effect where the interests are not divergent.

"The case of India," says the Earl of Cromer, "differs very materially from that of the self-governing Dominions. . . . That some reforms will have to be made after the war in the methods under which India is at present governed," he adds, "is both possible and probable."

The general direction which reform may take was indicated in the dispatch of the Government of India dated December, 1911, which contains the following passage:

"The only possible solution of the difficulty would appear to be gradually to give the Provinces a larger measure of self-government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all and possessing power to interfere in case of misgovernment, but ordinarily restricting their functions to matters of Imperial concern."

"I am very clearly of opinion," again says Lord Cromer, "that India is not yet ripe for complete self-government in the sense in which that term is used in the Dominions. The same may be said of Egypt and the Soudan. It would at present be altogether premature to discuss the desirability of bringing either of these two countries within the full scope of a general scheme for the Federation of the Empire."

In the luminous article from which I have quoted above¹ Lord Cromer asks:

¹ See "After-War Problems", edited by W. H. Dawson. London, Allen and Unwin Ltd. 1917.

"How is Nationalism, which is based on the right to autonomy, to be reconciled with Imperialism, which is often dictated by economic interests or geographical considerations and which need not necessarily but may often be irreconcilable with the assertion of autonomous rights? Democratic political thinkers answer, almost with one voice, 'By the adoption of the system of Federation'."

In Lord Cromer's opinion they are unquestionably right in principle.

It would, he thinks, be a mistake to be unduly daunted by the obvious difficulties which will have to be encountered in devising a plan of federation.

Looking at the extreme complexity of the subject and the great importance of avoiding a false step, it would be wise for all concerned, he observes, to proceed tentatively, to be satisfied for the time being with dealing with the comparatively easy subject of a somewhat closer association in executive matters, and then to see how the revised system works before proceeding to reforms of a more drastic and far-reaching description.

In any case it seems desirable, even if more important changes be made, to arrange that the Imperial Conference should, for the future, meet every two years instead of, at present, at intervals of four years. "Thus, the statesmen both of the United Kingdom and of the Dominions would more frequently be brought in close contact with each other. They would be able mutually to exchange views."

However, remarks Lord Cromer in the same article, broadly speaking, there are two methods by which consultations with the Dominions can be secured. One is to associate them to a greater extent than at present with the executive action of the British Government. The

other is to go farther afield, to change the whole constitution of the British Empire, and by some kind of legislative amalgamation to enable the people of each separate imperial unit to make their voices heard by adopting the normal and habitual proceedings common under all democratic forms of government.

"Obviously, the former of these two alternatives possesses the advantage that it involves, relatively speaking, a far less degree of radical change and that it is much less difficult to carry into execution than the latter."

Colonials are fully aware, says Lord Cromer, that no sane British statesman would for one moment propose that coercion should be exercised in order to oblige them to maintain a connection which had become irksome or distasteful to them. But they are far from desiring severance. They hold that both self-interest and sentiment point to the conclusion that, if any change is to take place, it should be in the direction, not of separation, but of closer union, which must never, however, in any degree impair local autonomy.

Recent events, adds Lord Cromer, have enormously tended to strengthen the force of these considerations. "Never did the short-sighted and defective statesmanship of Berlin err more conspicuously than when it thought that national peril would exercise a dissolving effect on the component parts of the British Empire. The very opposite has taken place. The event which it was thought would sunder the colonial connection has tended to solder it together to the extent of imparting to it a strength and rigidity which has astonished the world. To the amazement of all absolutists and coercionists the link was found to be so tough because it was so slender. Never have democratic principles achieved a greater triumph."

These judicious remarks of a man combining, as Lord Cromer did, the experience of a man of action and of a well-read and thoughtful observer apply not only to federation within the British Empire but to the principle of federation generally.

CHAPTER XIV

A SOCIETY (OR LEAGUE) OF NATIONS

THE pre-Congress of Paris has placed before the world its draft of a constitution of a "League of Nations." There is matter in it to keep the public opinions of all the races, nations and governments of mankind occupied for some time to come.

The French edition of the draft uses the term "Société" — the English, "League."

The basis of the draft is President Wilson's fourteenth proposition which is as follows:

"A general association of Nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike."

In his July Fourth speech the President enlarged on this proposition. The fourth proposition of that speech set out that "the establishment of an organization of peace which shall make it certain that the combined power of free nations will check every invasion of right, and serve to make peace and justice the more secure by affording a definite tribunal of opinion to which all must submit and by which every international readjustment that cannot be amicably agreed upon by the peoples directly concerned shall be sanctioned."

In his letter to the German Government of November 5, 1918, Mr. Lansing wrote :

"The Allied Governments . . . declare their willingness to make peace with the Government of Germany on the terms of peace laid down in the President's address to Congress of January 8, 1918, and the principles enunciated in his subsequent addresses."

In the same letter Mr. Lansing on behalf of the Allies added :

"Further, in the conditions of peace laid down in his address to Congress of January 8, 1918, the President declared that invaded territories must be restored as well as evacuated and freed. The Allied Governments feel that no doubt ought to be allowed to exist as to what this provision implies. By it, they understand that compensations will be made by Germany for all damages done to the civilian population of the Allies and their property by the aggression of Germany by land, by sea and from the air."

This agreement between the belligerents is the foundation to which the Society of Nations will owe its existence.

It has been seen that the French rendering of "Society" is correct. The agreement is to create a *society* not a *league* of nations and it will be for the Peace Congress when it meets to decide whether it shall be the one or the other.

The terms of peace offered by the Allies on which hostilities were brought to a termination are the

basis. We now have a draft elaborated by the Allies as a formulation of the details of these terms in so far as the Society of Nations is concerned. But we must not treat it as a final statement or forget that the real basis is still the enunciation of principles forming the terms of peace agreed to by the belligerents and to which all the Allies' drafts, whether relating to the proposed Society of Nations or to other matters, are subordinate until the contracting parties determine otherwise.

Meanwhile it is a draft submitted for public criticism and as such is only different from other drafts in having been drawn up, as President Wilson intimated, by the official representatives of the different governments represented.¹

It leaves intact President Wilson's propositions which critics may interpret differently, but which even he has no power to alter without the consent of all the Parties to the agreement they constitute.

The President's fourteenth proposition precipitated quite a deluge of interesting suggestions from both sides of the belligerent frontier. Not only were societies of an incidental character formed for study of the details it implied but Parliamentary and Extra-Parliamentary Committees were entrusted with the consideration of its form and potentialities. In fact it was one of those generous, though rather vague ideas which appeal to men and women of

¹ The President in his address on the draft said: "Inasmuch as I am stating it in presence of official representatives of the various governments here present, including myself, I may say that there is a universal feeling that the world cannot rest satisfied with merely official guidance."

ideals and lend themselves to a great deal of comment without need to alight on the *terra firma* of fact or to descend into the subsoil of traditional and historical political development.

The President himself rather tentatively used the expression "must be formed." "A general association of Nations," he said, "must be formed under specific covenants." Did he mean by "general" open to all nations in opposition to any idea of exclusiveness, that is, in opposition to a League of Nations which historically would rather have the nature of a "combine" operating to some extent aggressively? Why "specific"? Does this add any qualification to the sense of "covenant"? These "specific" covenants, he adds, are to "give mutual guarantees of political independence and territorial integrity to great and small states alike."

It seems as if the President had dealt with two different suggestions in one proposition, the one being a general association of nations to be formed after foundations had been laid by special agreements among the different High Contracting Parties in the several treaties between them which will determine their respective peace relations for the future.

In what sense does the President use the term "mutual guarantees"? I presume that he uses it in its diplomatic sense of a deliberate written undertaking in treaty form.

In his July Fourth statement of the "ends for which the associated peoples of the world are fighting" President Wilson seems to explain his meaning.

In the fourth proposition of that statement he speaks of "the establishment of an organization of peace which shall make it certain that the combined power of free nations will check every invasion of right."

If only "free nations" will be admitted to the organisation, the term "free" requires definition and the "Society of Nations" is no longer a general one.

What is the criterion of *freedom*?

Mr. H. G. Wells, to make the matter *pro tanto* clearer, dropped the term *Society* and adopted the term *League*. "The Western Allies know to-day," says this distinguished writer, "what is involved in making bargains with governments that do not stand for their people." In further explanation he adds, it must be clearly in the President's mind that "no mere 'scrap of paper' with just a Kaiser's or a Chancellor's endorsement is a good enough earnest of fellowship in the League. It cannot be a diplomatists' league. The League of Nations, if it is to have any such effect as people seem to expect of it, must be 'understood of the people'; that is to say, it must be supported and sustained by deliberate explanation and teaching by School and Church and Press of the whole mass of all the peoples concerned."

This explanation of Mr. Wells' did not lighten the burden of seeking to work out details for giving practical effect to the President's suggestion!

Lord Grey of Falloden followed the example of Mr. Wells in speaking at all times of a League of

Nations. The latter, as we see, takes a rather idealistic view of the possibilities of united moral and intellectual effort. Lord Grey belongs by recent experience to diplomacy. It does not follow, he observes in his pamphlet on the subject, that a "League of Nations to secure the peace of the world" will remain impossible because "it has not been possible hitherto."

The term "League of Nations to secure the peace of the world" does not necessarily imply "free" nations. It is obvious that if an autocrat like the late Russian Emperor, France and the British Empire formed a league to preserve the peace of the world, they were a League of Nations. It was as such that they gave effect to their bond. Practically all the nations of the world joined their League, and in actual practice we have at this moment what is contemplated by a league. Moreover this League is in action for the punishment of defaulters; it surrounded the brigand who attacked his neighbour, pursued him by hue and cry till he could escape no longer and surrendered to justice.

The tragically self-revealing German apology for the invasion of Belgium, — that Germany's strength lay in the superior speed with which she could bring her forces against her enemies and defeat them before they were ready, — her admission that any attempt to settle a difficulty by negotiation deprived her of that superiority, in other words that she made war to prevent her adversary from becoming better able to defend himself, shows where

the danger is. When President Wilson speaks of "the combined power of free nations" does he not contemplate the power to do the very thing the Allies have just been doing?

A League of Nations, then, will necessarily restrict national independence to the extent requisite for mutual assurance against the renewal of the condition of things which culminated in a world war. It will place a limitation on the free action of the participating nations.

It is in this sense that Lord Grey of Falloden regarded it, as explained in the pamphlet from which I have already quoted.

The obligation implied in joining in the League, he says, "is that if any nation will not observe this limitation upon its national action; if it breaks the agreement which is the basis of the League, rejects all peaceful methods of settlement and resorts to force, the other nations must one and all use their combined force against it. The economic pressure that such a League could use would in itself be very powerful, and the action of some of the smaller States composing the League could perhaps not go beyond economic pressure, but those States that have power must be ready to use all the force, economic, military or naval, that they possess. It must be clearly understood and accepted that defection from or violation of the agreement by one or more States does not absolve all or any of the others from the obligation to enforce the agreement."

It seems also to be the view of Mr. A. J. Balfour,

the present British Secretary for Foreign Affairs, who, when forwarding the British war aims in answer to President Wilson's request, stated on behalf of his Government that "behind all treaty arrangements for preventing or limiting hostilities, some form of international sanction should be devised which would have a deterrent effect on aggressive purposes."

Just what is set out in the passage from Lord Grey's pamphlet we have been doing during the last four and a half years.

We have used all the combined force, — economic, military and naval, — of some fifteen States, including five out of the seven great Powers, against practically one delinquent.

I do not suppose that President Wilson or Lord Grey or Mr. Balfour contemplates the possibility of having to begin such a war over again to insure observance of the agreement entered into by the associated nations as "the basis of this League." Has this occurred to President Wilson and is it this which accounts for his having added to his fourth July Fourth proposition an apparent qualification? In that proposition speaking of the "establishment of an organization of peace" he adds, "which shall . . . serve to make peace and justice the more secure by affording a definite *tribunal of opinion* to which all must submit."

What is a *definite tribunal of opinion*? Does the President mean a permanent Hague Court such as the United States plenipotentiaries proposed at

the Conference of 1907, with salaried judges sitting as in national courts?

Then the President concludes his July Fourth proposition by giving the tribunal jurisdiction over every "international readjustment that cannot be amicably agreed upon by the people directly concerned." I presume that by "readjustment" the President meant that he proposed to turn over to the new "tribunal of opinion" all questions unsettled by the Treaty of Peace.

By this tribunal, he says, such readjustment shall be "sanctioned." This seems from the context to be merely a loose employment of the word. I take it that he merely meant sanctioned by a decision.

The use of the word "readjustment", if the above interpretation of the President's meaning is not correct, may imply that he has perceived the difficulty of bringing claims not based on purely juridical grounds within the scope of an International Court of Law, claims for instance against the closing of thinly populated areas to immigration, against discriminating tariffs, protective port and canal dues, etc., disproportionate colonial distribution, the right to coaling stations commensurate with maritime expansion, in fact those readjustments which the varying and respective developments of different nations require to prevent hardship, grievances, and eventually those shocks which lead to the display of force and even war.

Analysed and reduced to its constituent parts the President's July Fourth proposition seems to include the four following elements :

1. Establishment of an international organisation for the preservation of international peace ;

2. That organisation to impose such sanctions as it may devise for preventing any invasion of the rights of members thereof ;

3. A tribunal to be established by the organisation for the trial of any such invasion of right, but at the same time,

4. Power to be given to the tribunal to deal with claims having the nature of a readjustment, that is, claims not based solely on juridical right.

If this was the President's meaning, he has placed his finger on what has hitherto been the weak point in all treaties of arbitration, nay, in the very system of arbitration, as at present conceived, as a method for the solution of any really dangerous international disputes, viz. : those involving material interest, traditional policy or national pride.

I can say this with some reason having, as Convener of the Arbitration Committee of the Institute of International Law, endeavoured in my different reports and draft provisions to meet the difficulty. The reader will, I hope, pardon me the vanity of quoting the following passage from my report of 1912, as it preceded the War and which, perhaps better than any suggestions I might make in existing contingencies when a certain amount of reticence is necessary, serves to illustrate what I take to have inspired President Wilson's meaning :

The difficulty for States to include in an arbitration treaty all differences without exception arises from the fact that there exist no rules, except the ordinary juridical rules, which arbitrators can apply.

Thus how would it be possible to frame rules enabling States to have recourse to arbitration in cases of preponderating interest without any real juridical basis: for instance when it is a question of the disrupted and disordered condition of a neighbouring country and the actual or alleged danger resulting from this condition for the State's own territory (the case between France and Tunisia, between France and Morocco, Russia and Persia) or where the claim is for colonial territories in proportion to the needs of an emigrating population (the case alleged between Germany and France and between Germany and Portugal — a possible case between Russia and Japan for Eastern Siberia, between Germany and Australia, between Japan and the United States for the Philippines), or, again, in questions of rectification of frontiers to bring them into line with a reasonable geographical situation on racial grounds (the case alleged between Italy and Austria-Hungary for the cession to Italy of the Italian portions of the Empire, the case alleged between Greece and Turkey for the cession to Greece of islands having Greek populations, the cases between Serbia and Austria-Hungary as regards Bosnia-Herzegovina and between Bulgaria and Greece and Turkey as regards districts in Macedonia), or treatment on racial grounds (a possible case for Japan and China respecting their subjects in the United States, Canada and Australia).

There is no juridical rule capable of application to any of the problems in this list, among which there is sufficient material for a dozen possible wars.

One alone might be the signal for all to break out at once. . . .

To enable arbitration to settle such questions it would be necessary to allow the judges to take their stand alongside the god of battle, to appraise the fortune of war, and calculate the issue of armed conflicts. They would have to take into account, as I have said, preponderating interests, the balance of power, strength so overwhelming that the issue of a war could leave no possible doubt. In vain one searches in the arsenal of law for rules for arbitration which could provide solutions in cases where justice plays little or no part at all. For such cases, there is only mediation which in certain contingencies might take the form of a threat of intervention. Generally speaking, all that can apparently be done at present is to stimulate public reprobation of interested acts of violence, of all violations of treaty engagements, of all the international immorality which still pollutes the age in which we live.

President Wilson had, no doubt, as a historian, perceived the gravity of the problem of applying principles of law or justice in most of the troubles which have eventuated in war. Choice of the lesser among evils, expediency, and a genuine desire for the preservation of peace, even the attitude which a common French saying adopts as regards recourse to law, that "a poor compromise is better than a good judgment", may be of help within the Society of Nations proposed by the President.

I have pointed out some of the difficulties and suggested others in creating a Society of Nations.

The greatest of all is the creation of the new political entity itself and the curtailment of the individual legislative independence of the federating States which it implies, not because peoples may be unwilling to curtail power of their own governments to plunge them into international ventures without their consent, but because any power of coercion possessed by the executive authority of the federated States would entail extension of the very power in question in each individual State which it is sought to restrict and release from that legislative control which is now universally acknowledged to be inherent to the possession of political freedom.

Still as President Wilson said in his speech laying the draft on the table of the pre-Congress "a living thing is born." "It is not in contemplation", he added, that it should be "merely a league to secure the peace of the world. It is a league which can be used for co-operation in any international matter." These were very significant words, the full meaning of which is apparent when we bear in mind that the greatest cares of modern statecraft are economic and that the greatest problems which face modern parliaments are financial — that the so-called labour question includes both and that it is essentially international, because on the efficiency of labour and practically labour alone depends the prosperity of the masses of mankind and they cannot live on domestic exchanges in countries which do not supply the raw materials of life and industry within their own boundaries.

The preamble, therefore, starts off with the statement that the covenant is entered into "in order to promote international co-operation" and only secondly "international peace and security", which may or may not be a consequence of any effort to interfere with the independence of adhering or non-adhering States.

The text of the draft "covenant", as laid before the world for consideration at the sitting on February 14 of the pre-Congress, gives rise to different observations, a few of which are appended to the text set out below :

COVENANT

(1) *Preamble* — In order to promote international co-operation and to secure international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just, and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, the Powers signatory to this covenant adopt this Constitution of the League of Nations :

Article 1. The action of the high contracting parties under the terms of this covenant shall be effected through the instrumentality of a meeting of a body of delegates representing the high contracting parties, of meetings at more frequent intervals of an Executive Council and of a permanent international secretariat to be established at the seat of the League.

(1) President Wilson, in presenting the plan of the League of Nations at the full sitting of the Peace Conference at the French Foreign Office said :

“I have the honour, and, as I esteem it, the very great privilege of reporting in the name of the Commission constituted by this Conference on the formulation of a plan for the League of Nations. I am happy to say that it is a unanimous report, a unanimous report from the representatives of fourteen nations — the United States, Great Britain, France, Italy, Japan, Belgium, Brazil, China, Czecho-Slovak, Greece, Poland, Portugal, Rumania and Serbia.”

Article 2. Meetings of the body of delegates shall be held at stated (1) intervals and from time to time, as occasion may require, for the purpose of dealing with matters within the sphere of action of the League. Meetings of the body of delegates shall be held at the seat of the League, or at such other places as may be found convenient, and shall consist of representatives of the high contracting parties. Each of the high contracting parties shall have one vote, but may have not more than three representatives.

(1) The word “stated” is too vague to afford any security for the adhering Parties. The words “from time to time” and “as occasion may require” suggest that the word “stated” does not mean *regular*. Then what does it mean?

Who, moreover, is to determine when the occasion for meeting has occurred or where the meeting shall be held? The wording of the clause excludes the

interpretation that the Body of Delegates decides when or where it shall meet.

Article 3. The Executive Council shall consist of representatives of the United States of America, the British Empire, France, Italy, and Japan, together with representatives of four other States, members of the League. (1) The selection of these four States shall be made by the body of delegates on such principles and in such manner as they think fit. Pending the appointment of these representatives of the other States, representatives of — shall be members of the Executive Council.

Meetings of the Council shall be held from time to time as occasion may require, and at least once a year, at whatever place may be decided on, or, failing any such decision, at the seat of the League, and any matter within the sphere of action of the League or affecting the peace of the world may be dealt with at such meetings.

Invitations shall be sent to any Power to attend a meeting of the council at which such matters directly affecting its interests are to be discussed, and no decision taken at any meeting will be binding on such Powers unless so invited.

(1) The majority is to consist at all times of the five States named. The four appointments to be made by the body of delegates are of States, not persons. This means that if, let us say, Belgium, Switzerland, China and Argentine were appointed, these four Powers would represent on the Executive Council the interests and control over Holland, Portugal, Sweden, Norway, etc., in Europe and over Brazil, Mexico, etc., on the American Continent.

This is not likely to be agreed to in view of the enormous powers given in the draft to the Executive Council, and the article will probably have to be recast on quite different lines.

The provision that this Council of nine may cite before it any State with whose interests it may intend to deal and that unless it is so cited decisions are not binding on it does not attenuate the interference with national autonomy.

Article 4. All matters of procedure at meetings of the body of delegates or the Executive Council, including the appointment of committees to investigate particular matters, shall be regulated by the body of delegates or the Executive Council, and may be decided by a majority of the States represented at the meeting.

The first meeting of the body of delegates and of the Executive Council shall be summoned by the President of the United States of America.

Article 5. The permanent secretariat of the League shall be established at —, which shall constitute the seat of the League. The secretariat shall comprise such secretaries and staff as may be required, under the general direction and control of a Secretary General of the League, who shall be chosen by the Executive Council. The secretariat shall be appointed by the Secretary General subject to confirmation by the Executive Council.

The Secretary General shall act in that capacity at all meetings of the body of delegates or of the Executive Council.

The expenses of the secretariat shall be borne by the States members of the League, in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

Article 6. Representatives of the high contracting parties and officials of the League, when engaged in the business of the League, shall enjoy diplomatic privileges and immunities, and the buildings occupied by the League or its officials, or by representatives attending its meetings, shall enjoy the benefits of extraterritoriality.

Article 7. Admission to the League of States, not signatories to the covenant and not named in the protocol hereto as States to be invited to adhere to the covenant, requires the assent of not less than two thirds of the States represented in the body of delegates, and shall be limited to fully self-governing countries (1), including dominions and colonies.

No State shall be admitted to the League unless it is able to give effective guarantees of its sincere intention to observe its international obligations and unless it shall conform to such principles as may be prescribed by the League in regard to its naval and military forces and armaments (2).

(1) What is a fully self-governing country?

Is a country in which women are excluded from representation and government *fully* self-governing?

Is a country in which a government has powers in conjunction with a hereditary sovereign to plunge it into war without the consent of parliament a *fully* self-governing country?

Is a dominion or colony in which a governor not appointed by it has a right of veto a self-governing country?

(2) What is meant by *effective guarantees of sincerity* or *intention*? An example of such a guarantee and a definition of sincerity are necessary

as *telsquels*; the words have the appearance of a contradiction of terms.

Article 8. The high contracting parties recognize the principle that the maintenance of peace will require the reduction of national armaments to the lowest point consistent with national safety, and the enforcement by common action of international obligations, having special regard to the geographical situation and circumstances of each State, and the Executive Council shall formulate plans for effecting such reduction. The Executive Council shall also determine for the consideration and action of the several Governments what military equipment and armament is fair and reasonable in proportion to the scale of forces laid down in the program of disarmament; and these limits, when adopted, shall not be exceeded without the permission of the Executive Council (1).

The high contracting parties agree that the manufacture by private enterprise of munitions and implements of war lends itself to grave objections, and direct the Executive Council to advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those countries which are not able to manufacture for themselves the munitions and implements of war necessary for their safety.

The high contracting parties undertake in no way to conceal from each other the condition of such of their industries as are capable of being adapted to warlike purposes or the scale of their armaments, and agree that there shall be full and frank interchange of information as to their military and naval programs (2).

(1) The first paragraph of the article taken in conjunction with Article 3 implies that each Power

will be summoned before the Executive of Nine and be heard on the subject of its disarmament. The Executive only determines for the consideration of the respective Powers what is fair and reasonable. With whom rests the final decision in case of disagreement between the Executive and such Powers?

(2) The second and third paragraphs seem to favour the munition industries of the Executive Powers. As this subject of private arsenals will probably be one of the chief questions for the decision of the Peace Congress the weakness of the wording of the paragraph does not necessarily imply tenderness for these powerful enterprises.

Article 9. A permanent commission shall be constituted to advise the League on the execution of the provisions of Article 8 and on military and naval questions generally (1).

(1) Will the Permanent Commission be appointed by the Executive Powers? It is supererogation to criticise the article which ought really to form part of Article 8 till this is made clear.

Article 10. The high contracting parties shall undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all States members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Executive Council shall advise upon the means by which the obligation shall be fulfilled.

Article 11. Any war or threat of war, whether immediately affecting any of the high contracting parties or not,

is hereby declared a matter of concern to the League, and the high contracting parties reserve the right to take any action that may be deemed wise and effectual to safeguard the peace of nations.

It is hereby also declared and agreed to be the friendly right of each of the high contracting parties to draw the attention of the body of delegates or of the Executive Council to any circumstance affecting international intercourse which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Article 12. The high contracting parties agree that should disputes arise between them which cannot be adjusted by the ordinary processes of diplomacy they will in no case resort to war without previously submitting the questions and matters involved either to arbitration or to inquiry by the Executive Council, and until three months after the award by the arbitrators or a recommendation by the Executive Council, and that they will not even then resort to war as against a member of the League which complies with the award of the arbitrators or the recommendation of the Executive Council.

In any case under this article the award of the arbitrators shall be made within a reasonable time, and the recommendation of the Executive Council shall be made within six months after the submission of the dispute.

Article 13. The high contracting parties agree that whenever any dispute or difficulty shall arise between them, which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole matter to arbitration. For this purpose the court of arbitration to which the case is referred shall be the court agreed on

by the parties or stipulated in any convention existing between them. The high contracting parties agree that they will carry out in full good faith any award that may be rendered. In the event of any failure to carry out the award the Executive Council shall propose what steps can best be taken to give effect thereto.

Article 14. The Executive Council shall formulate plans for the establishment of a permanent court of international justice, and this court shall, when established, be competent to hear and determine any matter which the parties recognize as suitable for submission to it for arbitration under the foregoing article.

Article 15. If there should arise between States, members of the League, any dispute likely to lead to rupture, which is not submitted to arbitration as above, the high contracting parties agree that they will refer the matter to the Executive Council; either party to the dispute may give notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof. For this purpose the parties agree to communicate to the Secretary General as promptly as possible statements of their case, all the relevant facts and papers, and the Executive Council may forthwith direct the publication thereof.

Where the efforts of the council lead to the settlement of the dispute, a statement shall be published, indicating the nature of the dispute and the terms of settlement, together with such explanations as may be appropriate. If the dispute has not been settled, a report by the council shall be published, setting forth with all necessary facts and explanations the recommendation which the council think just and proper for the settlement of the dispute. If the report is unanimously agreed to by the members of

the council, other than the parties to the dispute, the high contracting parties agree that they will not go to war with any party which complies with the recommendations, and that if any party shall refuse so to comply the council shall propose measures necessary to give effect to the recommendations. If no such unanimous report can be made it shall be the duty of the majority and the privilege of the minority to issue statements, indicating what they believe to be the facts, and containing the reasons which they consider to be just and proper.

The Executive Council may in any case under this article refer the dispute to the body of delegates. The dispute shall be so referred at the request of either party to the dispute, provided that such request must be made within fourteen days after the submission of the dispute. In a case referred to the body of delegates, all the provisions of this article, and of Article 12, relating to the action and powers of the Executive Council, shall apply to the action and powers of the body of delegates.¹

¹ After reading the second paragraph of Article 15 the President said: "I pause to point out that a misconception might arise in connection with one of the sentences I have just read: 'If any party shall refuse so to comply, the Council shall propose the measures necessary to give effect to the recommendation.'"

"A case in point, a purely hypothetical case, is this: Suppose that there is in the possession of a particular Power a piece of territory or some other substantial thing in dispute to which it is claimed that it is not entitled. Suppose that the matter is submitted to the Executive Council for a recommendation as to the settlement of the dispute, diplomacy having failed, and suppose that the decision is in favour of the party which claims the subject matter of dispute as against the party which has the subject matter in dispute.

"Then if the party in possession of the subject matter in dispute merely sits still and does nothing, it has accepted the decision of the Council in the sense that it makes no resistance; but something must be done to see that it surrenders the subject matter in dispute. In such a case, the only case contemplated, it is provided that the Executive

Article 16. Should any of the high contracting parties break or disregard its covenants under Article 12 it shall thereby ipso facto be deemed to have committed an act of war against all the other members of the League, which hereby undertakes immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a member of the League or not (1).

It shall be the duty of the Executive Council in such case to recommend what effective military or naval force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The high contracting parties agree, further, that they will mutually support one another in the financial and economic measures which may be taken under this article in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State and that they will afford passage through their territory to the forces of any of the high contracting parties who are co-operating to protect the covenants of the League.

(1) This would be difficult to apply, if the defaulter were a country on which others were dependent for food or raw materials. The draftsman tries to meet the difficulty in the third paragraph, but

Council may then consider what steps may be necessary to oblige the party against whom judgment has gone to comply with the decisions of the Council."

the one clause is positive and the other merely potential.

Article 17. In the event of dispute between one State member of the League and another State which is not a member of the League, or between States not members of the League, the high contracting parties agree that the State or States, not members of the League, shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Executive Council may deem just, and upon acceptance of any such invitation, the above provisions shall be applied with such modifications as may be deemed necessary by the League.

Upon such invitation being given the Executive Council shall immediately institute an inquiry into the circumstances and merits of the dispute and recommend such action as may seem best and most effectual in the circumstances.

In the event of a power so invited refusing to accept the obligations of membership in the League for the purposes of the League, which in the case of a State member of the League would constitute a breach of Article 12, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute, when so invited, refuse to accept the obligations of membership in the League for the purpose of such dispute, the Executive Council may take such action and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

Article 18. The high contracting parties agree that the League shall be intrusted with general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest (1).

(1) This article seems to regard Article 8 as of no effect and in any case Articles 18 and 8 belong together.

*Article 19.*¹ To those colonies and territories which, as a consequence of the late war, have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in the constitution of the League.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be intrusted to advanced nations, who by reason of their resources, their experience, or their geographical position, can best undertake this responsibility, and that this tutelage should be exercised by them as mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities, formerly belonging to the Turkish Empire, have reached a stage of development where their existence as independent nations can be provisionally recognized, subject to the rendering of administrative advice and assistance by a mandatory power until such

¹ Before reading Article 19, the President said: "Let me say before reading Article 19, that before being embodied in this document it was the subject matter of a very careful discussion by representatives of the five greater Parties, and that their unanimous conclusion in the matter is embodied in this Article."

time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the mandatory power.

Other peoples, especially those of Central Africa, are at such a stage that the mandatory must be responsible for the administration of the territory, subject to conditions which will guarantee freedom of conscience or religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic, and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other members of the League.

There are territories, such as Southwest Africa and certain of the South Pacific Isles, which, owing to the sparseness of the population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the mandatory State and other circumstances, can be best administered under the laws of the mandatory States as integral portions thereof, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the mandatory State shall render to the League an annual report in reference to the territory committed to its charge (1).

The degree of authority, control, or administration, to be exercised by the mandatory State, shall, if not previously agreed upon by the high contracting parties in each case, be explicitly defined by the Executive Council in a special act or charter.

The high contracting parties further agree to establish at the seat of the League a mandatory commission to

receive and examine the annual reports of the mandatory powers, and to assist the League in insuring the observance of the terms of all mandates (2).

(1) This provision might be generalised with advantage, publicity being obviously a safeguard against *combinazione* of all kinds.

(2) Does this mean that the *Mandatory Commission* will be composed of members of the Executive Council or of the delegates, or of both or of neither? What is the effect of the words "at the seat of the League?" Do they mean that the Commission is to be a mere *Bureau*? Are the reports of the Commission or the mandatory's reports to be made public? Will it be a sort of Ministry with a chief responsible to the Executive Council — perhaps a member of it?

Article 20. The high contracting parties will endeavor to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend; and to that end agree to establish as part of the organization of the League a permanent bureau of labor (1).

(1) The same observations in general apply to this article as to the final clause of the previous one.

Article 21. The high contracting parties agree that provision shall be made through the instrumentality of the League to secure and maintain freedom of transit and equitable treatment for the commerce of all States members of the League, having in mind, among other

things, special arrangements with regard to the necessities of the regions devastated during the war of 1914-1918 (1).

(1) This article is obscure, seeming to apply to some difference of opinion of the drafting Powers which is not obvious.

Article 22. The high contracting parties agree to place under the control of the League all international bureaus already established by general treaties, if the parties to such treaties consent. Furthermore, they agree that all such international bureaus to be constituted in future shall be placed under control of the League (1).

(1) Does the control of the League mean of the Executive Council? Will the control be exercised by an official reporting to it and (or) the delegates? Will there be a "Ministry of International Conventions" with a chief responsible to the Executive Council and (or) delegates?

Article 23. The high contracting parties agree that every treaty or international engagement (1) entered into hereafter by any State member of the League shall be forthwith registered with the Secretary General and as soon as possible published by him, and that no such treaty or international engagement shall be binding until so registered.

(1) Should this not read "every international treaty or engagement?" Is not the word "engagement" vague? Is not "obligation" or "undertaking" meant? The sense of the word "convention" in diplomacy has come to mean a treaty among a number of Powers, though it is also used

for agreements relating to commercial and industrial as distinguished from political matters.

Article 24. It shall be the right of the body of delegates from time to time to advise the reconsideration by States members of the League of treaties which have become inapplicable and of international conditions of which the continuance may endanger the peace of the world (1).

(1) This seems to be an inversion of procedure. Did not the draftsman mean: "It shall be the right of any State member of the League to submit for consideration by the delegates any treaty which has become inapplicable and demand release from its terms?" The article is obscure. An instance of what is meant is desirable.

Article 25. The high contracting parties severally agree that the present covenant is accepted as abrogating all obligations inter se which are inconsistent with the terms thereof, and solemnly engage that they will not hereafter enter into any engagements inconsistent with the terms thereof. In case any of the Powers signatory hereto or subsequently admitted to the League shall, before becoming a party to this covenant, have undertaken any obligations which are inconsistent with the terms of this covenant, it shall be the duty of such Power to take immediate steps to procure its release from such obligations.

Article 26. Amendments to this covenant will take effect when ratified by the States whose representatives compose the Executive Council and by three fourths of the States whose representatives compose the body of delegates.

Without wishing in any way to depreciate the draft thus submitted for consideration, I venture to remark that it shows the defects inherent to hasty drafting and to the compromising of different views there may not have been time to thresh out. Moreover, it seems influenced by the desire to assure the domination of the Great Powers while introducing a minimum of parliamentary restriction upon their supremacy through a Body of Delegates who are only vaguely brought into action if at all. Nevertheless, in spite of its defects, it is a very fair basis for discussion and as such, having the unanimous approval of the representatives of the Allies, it must be treated with respect.

I venture to suggest, however, that the greatest deterrent from war would be public and unfettered discussion of any difficulties capable of leading to it in a "parliament of mankind" and that voting after such discussions would have the effect of dividing it into parties which would necessarily lead to strife as in domestic parliaments and accentuate the evil it is sought to avert.

With this principle in view I have drawn up the following preamble of suggestions which may be useful for the further consideration of the Congress:

SUGGESTED PREAMBLE TO CONSTITUTION OF A
SOCIETY OF NATIONS

Whereas the idea of a Society of Nations has long been among the nobler aspirations of men, and the federation of communities for specific purposes has been successfully essayed;

Whereas such a Society as proposed at the present time has for object the prevention of war ;

Whereas the prevention of war seems attainable, if at all, by making its consequences so unlikely to insure success as to deter engaging in it, or by making clear to all mankind that solutions are less costly by pacific than by violent methods ;

Whereas an overwhelming combination of Powers for its prevention seems capable of serving as a deterrent, but neither history nor the practice of men in civil combinations affords any instances of such combinations having endured beyond an immediate common interest ;

Whereas, on the other hand, the better understanding of each other's objects, necessities, ideals may in itself be a preservative against the employment of violence as a means of obtaining satisfaction to just demands ;

Whereas, this better understanding depends upon statesmen meeting each other and being able to converse with each other ;

Whereas, resolutions dependent on the decisions of a majority would necessarily tend to division instead of harmony ;

Whereas to make such meetings effective and independent of passing events and currents of public feeling, it is desirable that they should be periodical and automatic ;

Whereas for the purpose of such meetings a country should be chosen which is permanently neutralised and where permanent officials and government authorities are likely to be less subject to international bias than countries not so detached from international controversies ;

Whereas of the three countries which enjoy permanent neutrality, viz.: Switzerland, Belgium and Luxemburg,

Luxemburg alone is completely neutralised and her territory, in this respect recalling to some extent the position of the "District of Columbia" in the United States, is marked out as the headquarters of official efforts for the avoidance of warfare;

Whereas official must be distinguished from unofficial agencies for the avoidance of war, and it is desirable not to let them be confused in the public mind;

Whereas it is desirable that a parliamentary union for all purposes should be created and that there should be no restriction placed upon the free discussion of all matters, and that a full report of the proceedings should be published; and

Whereas it is undesirable that such a union should have power to adopt resolutions outside matters of its by-laws;

Whereas it is desirable to discourage any spirit which can interfere with the free play of argument or with the revelation of facts and situations, the object of discussion being the enlightenment of public opinion and not coercion of a minority by a majority;

Whereas the periodical meetings of representatives of governments, though corresponding to meetings of a Senate, shall not be public and shall even be so secret that only matters may be divulged by specific authorisation of the Parties affected;

Whereas it is desirable that both Houses possess the greatest possible independence in so far as being governed by their own by-laws, electing their own Presidents, Vice-presidents, and other officers and having their own officials, their own independent buildings with all facilities for general assemblies, committee meetings, libraries, writing rooms, etc., on the scale of a parliament of a first-class State;

Whereas it is desirable that meetings shall not be pressed for time and that every year the Session should open at a fixed date which it is proposed should be the first of June, the sitting to continue until the work is completed ;

Whereas there is no reason why committees should not make suggestions or adopt conclusions in reports submitted for discussion at plenary sittings ;

Whereas it is desirable that the equality of States should be observed as far as possible, but that in the discussions it would be falsifying the object of free and untrammelled discussion to disregard the universal character of this parliament of mankind, and populations of the world should, as far as possible, be represented in such meetings and not the States to which they belong ;

Whereas, nevertheless, it is practically impossible as well as of no particular advantage to have a direct election for members and the election of parliaments can serve as the first stage of selection ; and

Whereas, it is indispensable for their independence that the members should be freely chosen by the respective parliaments themselves and not by governments or executives ;

And, whereas, by way of limiting to a workable proportion the number represented, there should be two members for every independent State ;

Whereas, also, it is desirable that all opinions should have a hearing, that all printed matter from whatever source and of whatever character should be admitted to the Library, classed and at the disposal of the public in the public Reading Room, which should be open to all persons of over twenty-one years of age ; and

No distinction should be made between the sexes in connection with these presents ;

It is hereby agreed, etc.

I have also drawn up the following further preamble to a suggested protocol dealing with matters apart from the constitution of the Society of Nations itself but closely correlated to its objects and scope :

SUGGESTED PREAMBLE TO A PROTOCOL TO BE ANNEXED
TO THE ABOVE

Furthermore, having in view the universal interest attaching to all efforts to promote reduction of the burden of armaments, the peaceable adjustment of conflicts involving vital interests or national honour, and the amicable settlement of all questions dangerous for international peace, and the hope that the ultimate futility of armed peace be rendered possible ;

And whereas by special agreements the Powers in 1899 and 1907 dealt with methods for the peaceable adjustment of all international conflicts ;

But whereas conflicts arise chiefly out of matters of rivalry connected with territorial aggrandisement and expansion, or out of the possible exclusion, for the benefit of particular States, of the trade and enterprise of other States, from existing or possible markets ;

And whereas in China, Central Africa, and Morocco the principle of equality of treatment, without distinction of nationality, has been permanently adopted as a fundamental condition in connection with economic expansion in these regions, and whereas most of the Powers have already expressed their attachment to this principle of equality ;

And whereas the High Contracting Parties have agreed that when any such High Contracting Parties shall acquire dominion or any dominant influence over territory outside Europe, by way of annexation, protectorate,

lease, sphere of influence, or otherwise, such acquisition shall be subject to the condition that absolute equality of treatment, whether by way of import or export duties, concessions, privileges, and economic matters of all kinds, shall be granted, maintained, or recognised, as the case may be, in regard to the subjects and citizens of all States without distinction ;

And whereas it is desirable to generalise the application of the principle of "buffer" zones at present in actual practice as between Burmah and Siam, and as between Sweden and Norway and thus lessen the suspicious rivalry which leads nations to compete against each other in accentuation of their frontier defences,

And whereas the High Contracting Parties have agreed to regard a zone on either side of their frontier as neutralized within which no fortification shall be erected or armed forces maintained, contiguous Powers to arrange the width of such neutralised zone between them in accordance with existing circumstances and the configuration of the soil ;

It is hereby agreed, etc.

CHAPTER XV

AMERICA'S MISSION

PRESIDENT WILSON'S peace propositions cannot, it has been seen, be regarded as a cut-and-dried, take-or-leave-it offer of peace. And even *they* do not lift the war out of a certain egotistic blindness, which posterity may lay to the charge of our generation. Vaguely many feel there is throughout mankind an inner *Drang*, an impulsion to which statesmen are not philosophic enough to give expression. We would like to link it up, in the sequence of historic causation, with something more worthy of its bloodshed, and suffering, and irreparable destruction of the patrimony of generations to come, than a number of matters which could and can, be much better settled by leisurely negotiation than by violence, and some of which it may be difficult to settle at all while men's nerves are still trembling with anger and their hands still bear the blood stains of battle.

We search in vain for its justification, and we have to fall back on excuses which will take it beyond the volition of statesmen.

Changes are taking place which were never at the outset dreamt of. The conversion of Germany

by defeat from a powerful autocracy into perhaps a still more powerful republican commonwealth, a federation through defeat of Southern Europe into a geographical entity capable of giving scope to inner autonomy while outwardly uniting its different races for their common weal seem to be among its concrete impending results. On the other hand, victory possibly evolving into reaction for self-defence, with three of the great allied nations forming "pockets", as it were, on the map of Europe, seems to be another.

The uncritical optimists, the *Candides* of our own time, turn their self-confident faces from the warnings of history. They condemn as impractical any distinction between causes and occasions. Like superficial administrators, they single out the occasion, the crime, the individual volition, and think that in surrounding and capturing the criminal they have quenched the source of the crime.

Yet those who have watched the evolution of our own time see its effects without being able to discern any stages in the process of its development. And when we cast our vision along the stream of ages, we seem to discern impulses, racial tendencies of mankind, which lie beyond the range of individual volition, blind impulses that lead whole peoples to their doom, inner forces of destruction which consume some, outer forces of destruction which move masses of men against each other, as if they were as dependent on cosmic phenomena as inundations and earthquakes. Babylon, Athens, Carthage, Egypt,

Rome, in turn bear witness to the one, as the mysterious westward push of Celt, Saxon, Slav, Hun attest the other. Does not the present War present features not unlike a *Völkerwanderung*, such as historians, sociologists and psychologists ascribe to over-population on the one hand, and to insufficient accessible food to feed it on the other. An island State possessing ships enough armed and unarmed to insure its ability to protect its overseas settlements has a safety valve through which its overflow can escape automatically, while the balance of food necessary to feed its home population automatically flows in as required. A State which has not these advantages and which by sea and by land can be forced by its neighbour to rely on its own resources solely to feed its population and its industries, may be exposed, when its population and its industries reach a certain point, to the bursting of its valveless boilers, and once more we may have been witnessing the phenomenon of invading hordes moving westward as if in search of food, of populations as if grown out of proportion to their available resources, breaking through the frontiers which contained them.

The aim of civilised man is, or at any rate ought to be, to emancipate his existence from such cataclysms, to make himself independent as far as possible of physical phenomena. He clothes and houses himself against the rigours of climate and season. He is no longer dependent on the domestic harvest for his food. He is constantly overcoming obstacles of distance. He is eradicating

disease, crime and other dangers to life. And during the last half-century efforts had been made to bring about a similar betterment in the international relations of mankind.

Posterity will certainly wish for the enlightenment future historians may be able to give it with more detachment than can be expected from those who have lived through the great tragedy.

Yet those who have been close to events can perhaps see later some of the seams and defects on the canvas of the panorama which may wear off under the erosion of time, and anyhow, one of the facts for posterity will be the way this generation views and judges the War.

This War has been described by one, if not more than one writer, as "a war to end war", and this idea seems to some extent to underlie President Wilson's idea of what the War means. A war to end war implies a peace from which the causes and dangers of future war will be eliminated. Cannot this devout wish of all mankind be expressed with more psychological precision by saying that electors should choose as their representatives men who are responsible and that the object for which they are chosen should be to build up a more logical, more reasonable condition of things than that which failed to prevent the present War?

There is a current optimism about the "ending" of war which assumes that peace, not war, is natural to man. There is nothing in nature or in history to bear out such an assumption. Moreover, just

as a spark can start a conflagration, so any petty monarch or community can fire the first shot that sets the world ablaze. The monarch of Montenegro has played the part of the spark in at least two wars!

Still, if the spark does not alight on inflammable material, it does or may do no harm.

Inflammable material unfortunately is scattered everywhere, and is largely beyond the scope of international arrangement.

International ill-feeling begotten of heated controversy and fanned in the press is one form of it. Munitions factories dependent for dividends on the fear of unpreparedness for war are another. Protective tariffs directed against particular countries are a third. Politicians in quest of sensational publicity are a fourth. And so on.

An optimist delusion is that war is the handiwork of statesmen and that, as it is the poor who with their lives pay the price of it, it is necessarily unpopular. Evidence tends quite the other way. There seems at all times to be a sufficient latent leaven of hatred at the core of every nation to insure popularity to any war a responsible government is likely to wage.

President Wilson is evidently quite alive to the danger of the inflammable material, seeing that he asks States to reform themselves and exacts as a primary condition of peace the suppression of "militarism", which means nothing if not an aggressive policy, a policy of threatening or hinting at war as an alternative for argument and reason.

Some forms of inflammable material can be dealt with by legislation. Others are dependent on enlightenment, on the growth and promotion of reciprocal knowledge of the geographical conditions, economic requirements and social ideals of different nations. Closer international contact than heretofore between statesmen, by personal meetings for the joint discussion of the problems arising out of conflicting interests which are as unavoidable in the life of nations as in that of individuals, may become one of the most effective methods by which danger of war can be averted. If the proposed Society or League of Nations went no further than to bring about the organisation of periodical meetings of such a kind, the boon to the world would largely contribute to redeem the War from the charge at any rate of futility.

' President Wilson's statement of the principles which should govern a liberated Europe for the future is an afterthought which has arisen during the War and has no connection with its causes. It is so big with potentialities that, living in the detail of our daily controversies, we hardly realise its immensity. Yet it is but the contemporary expression of the same impulse which animated the champions of Freedom who shook off the Roman yoke, who met at Runnymede, who flocked to the banner of Cromwell, who signed the Declaration of Independence, who proclaimed *les droits de l'homme*, who fought Napoleon and who are now fighting Napoleon's imitators, an impulse of reac-

tion which will always resist those who endeavour to assert a mastery. In this expansion of the impulse to a wider area of mankind the spokesman of the greatest free community in the world is only delivering a time-honoured message of freedom to fellow-men still under the yoke of unchosen masters. His message has been like the battle cry of the Crusaders, who crossed the then ocean to liberate Palestine and deliver Christendom from the yoke of Islam. But if it is to remain a crusade, the President must remain true to the principles he has enunciated and apply them with the justice and universality of a Gospel. God grant that he avoid the temptation to descend into the arena of revenge or conquest, and that the people of the United States, conscious of their gigantic mission and influenced by the lofty and eternal principles of Washington, will back their leader in the stern determination with which they entered the War to put an end not only to it, but, as far as possible, to causes and possible causes of war in the future, for the benefit of Mankind generally. The principles inscribed on behalf of the United States have been adopted by all the Allied governments as a promise to the Peoples whom they have the good fortune to rule — good fortune of wealth, good fortune of birth or even good fortune of intellect. They are a gospel of perpetual application and woe betide the classes, oligarchies or kings who on selfish, patriotic or revengeful grounds defraud them of the right for which they have been told they shed their blood and impoverished the future.

NOTE TO CHAPTER XV

SOME EXTRACTS FROM PRESIDENT WILSON'S MESSAGES (JANUARY TO APRIL, 1917)

Why We Are At War

January 22, 1917. . I only take it for granted that mere terms of peace between the belligerents will not satisfy even the belligerents themselves.

Mere agreements may not make peace secure. It will be absolutely necessary that a force be created as a guarantor of the permanency of the settlement so much greater than the force of any nation now engaged in any alliance hitherto formed or projected that no nation, no probable combination of nations, could face or withstand it.

If the peace presently to be made is to endure it must be a peace made secure by the organized major force of mankind.

Only a tranquil Europe can be a stable Europe. There must be not only a balance of power, but a community of powers not organized rivalries, but an organized common peace.

It would be accepted in humiliation, under duress, at an intolerable sacrifice, and would leave a sting, a resentment, a bitter memory, upon which terms of peace would rest, not permanently but only as upon quicksand.

February 6, 1917. I do not desire any hostile conflict with the Imperial German Government. We are the sincere friends of the German people and earnestly desire to remain at peace with them. We shall not believe that they are hostile to us until we are obliged to believe it; and we purpose nothing more than the reasonable defence of the undoubted rights of our people. We wish to reserve no selfish ends. We seek merely to stand true alike in thought and in action to the immemorial principles of our people which I sought to express in my address to the Senate only two weeks ago. We seek merely to vindicate our right to liberty and justice and an unmolested life. There are the bases of peace not war.

February 26, 1917. It is not of material interest merely that we are thinking. It is rather of fundamental human rights, chief of all, of the right to life itself. I am thinking not only of the rights of Americans to go and come about their proper business by way of the sea, but also of something much deeper, much more fundamental than that. I am thinking of those rights of humanity without which there is no civilization. My theme is of those great principles of compassion and of protection which mankind has sought to throw about human lives, the lives of noncombatants, the lives of men who are peacefully at work, keeping the industrial processes of the world quick and vital, the lives of women and children, and of those who supply the labor which ministers to their sustenance.

I cannot imagine any man with American principles at his heart hesitating to defend these things.

April 2, 1917. Our object now as then is to vindicate the principle of peace and justice in the life of the world

